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<u>Notice No</u>	Contents	Page
	III <i>Preparatory Acts</i>	
	COUNCIL	
2008/C 190 E/01	Common Position (EC) No 18/2008 of 6 June 2008 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to the adoption of a Regulation of the European Parliament and of the Council on common rules and standards for ship inspection and survey organisations (Recast) ⁽¹⁾	1
2008/C 190 E/02	Common Position (EC) No 19/2008 of 6 June 2008 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, 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 ⁽¹⁾	17

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⁽¹⁾ Text with EEA relevance

III

(Preparatory Acts)

COUNCIL

COMMON POSITION (EC) No 18/2008**adopted by the Council on 6 June 2008****with a view to adopting Regulation (EC) No .../2008 of the European Parliament and of the Council
of ... on common rules and standards for ship inspection and survey organisations (Recast)****(Text with EEA relevance)**

(2008/C 190 E/01)

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⁾,

Whereas:

- (1) Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations ⁽⁴⁾ has been significantly amended on several occasions. Since further amendments are to be made, it should be recast in the interests of clarity.
- (2) In view of the nature of the provisions of Directive 94/57/EC it seems appropriate that its provisions be recast in two different Community legal instruments, namely a Directive and a Regulation.

- (3) This Regulation is to be understood and interpreted in conformity with the Community's international obligations, including the United Nations Convention on the Law of the Sea of 10 December 1982.

- (4) Ship inspection and survey organisations should be able to offer their services throughout the Community and compete with each other while providing equal levels of safety and of environmental protection. The necessary professional standards for their activities should therefore be uniformly established and applied across the Community.

- (5) This objective should be pursued through measures that adequately tie in with the work of the International Maritime Organisation (IMO) and, where appropriate, build on and complement it. Furthermore, the Member States and the Commission should promote the development by the IMO of an international code for recognised organisations.

- (6) Minimum criteria for recognition of organisations should be laid down with a view to enhancing the safety of, and preventing pollution from, ships. The minimum criteria laid down in Directive 94/57/EC should therefore be strengthened.

- (7) In order to grant initial recognition to the organisations wishing to be authorised to work on behalf of the Member States, compliance with the minimum criteria laid down in this Regulation could be assessed more effectively in a harmonised and centralised manner by the Commission together with the Member States requesting the recognition.

⁽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. 632), Council Common Position of 6 June 2008 and Position of the European Parliament of... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 319, 12.12.1994, p. 20. Directive as last amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

- (8) Recognition should be granted only on the basis of the quality and safety performance of the organisation. It should be ensured that the extent of that recognition be at all times in keeping with the actual capacity of the organisation concerned. Recognition should furthermore take into account the differences in legal status and corporate structure of recognised organisations while continuing to ensure uniform application of the minimum criteria laid down in this Regulation and the effectiveness of the Community controls. Regardless of the corporate structure, the organisation to be recognised should provide services worldwide and be subject to global joint and several liability.
- (9) 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 ⁽¹⁾.
- (10) 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, to update the minimum criteria in Annex I and to adopt the criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships. 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.
- (11) It is of the utmost importance that failure by a recognised organisation to fulfil its obligations can be addressed in a prompt, effective and proportionate manner. The primary objective should be to correct any deficiencies with a view to removing any potential threat to safety or the environment at an early stage. The Commission should therefore be given the necessary powers to require that the recognised organisation undertake the necessary preventive and remedial action, and to impose fines and periodic penalty payments as coercive measures. When exercising these powers, the Commission should do so in a manner that complies with fundamental rights and should ensure that the organisation can make its views known throughout the procedure.
- (12) In accordance with the Community-wide approach, the decision to withdraw the recognition of an organisation which fails to fulfil the obligations set out in this Regulation if the above measures prove ineffective or the organisation otherwise presents an unacceptable threat to safety or the environment, has to be taken at Community level, and therefore by the Commission, on the basis of a committee procedure.
- (13) The continuous a posteriori monitoring of the recognised organisations to assess their compliance with this Regulation can be carried out more effectively in a harmonised and centralised manner. Therefore, it is appropriate that the Commission, together with the Member State requesting the recognition, be entrusted with this task on behalf of the Community.
- (14) As part of the monitoring of the operations of recognised organisations, it is crucial that Commission inspectors have access to ships and ship files regardless of the ship's flag in order to ascertain whether the recognised organisations are complying with the minimum criteria laid down in this Regulation in respect of all ships in their respective classes.
- (15) The ability of recognised organisations to identify rapidly and correct weaknesses in their rules, processes and internal controls is critical for the safety of the ships they inspect and certify. That ability should be enhanced by means of a Quality Assessment and Certification System, which should be independent of commercial or political interests in order to propose common action for the sustained improvement of all recognised organisations and ensure fruitful cooperation with the Commission.
- (16) The rules and procedures of recognised organisations are a key factor for increasing safety and preventing accidents and pollution. The recognised organisations have initiated a process that should lead to harmonisation of their rules and procedures. That process should be encouraged and supported by Community legislation, as it should have a positive impact on maritime safety as well as on the competitiveness of the European shipbuilding industry.
- (17) The harmonisation of the rules of recognised organisations for the design, construction and periodic survey of merchant ships is an ongoing process. Therefore, the obligation to have a set of own rules or the demonstrated ability to have own rules should be seen in the context of the process of harmonisation and should not constitute an obstacle to the activities of recognised organisations or potential candidates for recognition.
- (18) Recognised organisations should be obliged to update their technical standards and enforce them consistently in order to harmonise safety rules and ensure uniform implementation of international rules within the Community. Where the technical standards of recognised organisations are identical or very similar, mutual recognition of certificates for materials, equipment and components should be considered in appropriate cases, taking the most demanding and rigorous standard as the reference.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (19) While each recognised organisation, in principle, should be held responsible solely and exclusively in relation to the parts it certifies, the liability of recognised organisations and manufacturers will follow the agreed conditions or, as the case may be, the applicable law in each individual case.
- (20) Since transparency and exchange of information between interested parties, as well as public right of access to information, are fundamental tools for preventing accidents at sea, recognised organisations should provide all relevant statutory information concerning the conditions of the ships in their class to the port State control authorities and make it available to the general public.
- (21) In order to prevent ships from changing class to avoid carrying out necessary repairs, recognised organisations should exchange all relevant information among themselves concerning the conditions of ships changing class and involve the flag State when necessary.
- (22) The protection of intellectual property rights of shipyards, equipment suppliers and shipowners should not prevent normal business transactions and contractually agreed services between these parties.
- (23) The European Maritime Safety Agency (EMSA) established by Regulation (EC) No 1406/2002 ⁽¹⁾ should provide the necessary support to ensure the application of this Regulation.

- (24) Since the objective of this Regulation, namely the establishment of measures to be followed by organisations entrusted with the inspection, survey and certification of ships, operating in the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, 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.
- (25) Measures to be followed by the Member States in their relationship with ship inspection and survey organisations are laid down in Directive .../.../EC of the European Parliament and the Council of ... on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations ⁽²⁾,

HAVE ADOPTED THIS REGULATION:

Article 1

This Regulation establishes measures to be followed by organisations entrusted with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution, while furthering the objective of freedom to provide services. This includes the development and implementation of safety requirements for hull, machinery and electrical and control installations of ships falling under the scope of the international conventions.

Article 2

For the purpose of this Regulation the following definitions shall apply:

- (a) 'ship' means a ship falling within the scope of the international conventions;
- (b) 'international conventions' means the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto, the International Convention of Load Lines of 5 April 1966 and the International Convention for the Prevention of Pollution from Ships of 2 November 1973 (MARPOL), together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, in their up-to-date version;
- (c) 'organisation' means a legal entity, its subsidiaries and any other entities under its control, which jointly or separately carry out tasks falling under the scope of this Regulation;

⁽¹⁾ OJ L 208 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 1891/2006, (OJ L 304, 30.12.2006, p. 1).

⁽²⁾ OJ L ...

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|-------------------------------|---|
| (d) 'control' | means, for the purpose of point (c), rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable that entity to carry out tasks falling under the scope of this Regulation; |
| (e) 'recognised organisation' | means an organisation recognised in accordance with this Regulation; |
| (f) 'authorisation' | means an act whereby a Member State grants an authorisation or delegates powers to a recognised organisation; |
| (g) 'statutory certificate' | means a certificate issued by or on behalf of a flag State in accordance with the international conventions; |
| (h) 'rules and procedures' | means a recognised organisation's requirements for the design, construction, equipment, maintenance and survey of ships; |
| (i) 'class certificate' | means a document issued by a recognised organisation certifying the fitness of a ship for a particular use or service in accordance with the rules and procedures laid down and made public by that recognised organisation; |
| (j) 'location' | means the place of the registered office, central administration or principal place of business of an organisation. |

Article 3

1. Member States which wish to grant an authorisation to any organisation which is not yet recognised shall submit a request for recognition to the Commission together with complete information on, and evidence of, the organisation's compliance with the minimum criteria set out in Annex I and on the requirement and its undertaking that it shall comply with the provisions of Articles 8(4), 9, 10 and 11.

2. The Commission, together with the respective Member States submitting the request, shall carry out assessments of the organisations for which the request for recognition was received in order to verify that the organisations meet and undertake to comply with the requirements referred to in paragraph 1.

3. The Commission shall, in accordance with the regulatory procedure referred to in Article 12(3), refuse to recognise organisations which fail to meet the requirements referred to in paragraph 1 or whose performance is considered an unacceptable threat to safety or the environment on the basis of the criteria laid down in accordance with Article 14.

Article 4

1. Recognition shall be granted by the Commission in accordance with the regulatory procedure referred to in Article 12(3).

2. Recognition shall only be granted to organisations, which meet the requirements referred to in Article 3.

3. Recognition shall be granted to the relevant legal entity, which is the parent entity of all legal entities that constitute the

recognised organisation. The recognition shall encompass all legal entities that contribute to ensuring that that organisation provides cover for their services worldwide.

4. The Commission, acting in accordance with the regulatory procedure referred to in Article 12(3), may limit the recognition as regards certain types of ships, ships of a certain size, certain trades, or a combination thereof, in accordance with the proven capacity and expertise of the organisation concerned. In such a case, the Commission shall state the reasons for the limitation and the conditions under which the limitation shall be removed or can be widened. The limitation may be reviewed at any time.

5. The Commission shall draw up and regularly update a list of the organisations recognised in accordance with this Article. That list shall be published in the Official Journal of the European Union.

Article 5

Where the Commission considers that a recognised organisation has failed to fulfil the minimum criteria set out in the Annex I or its obligations under this Regulation, or that the safety and pollution prevention performance of a recognised organisation has worsened significantly, without, however, it constituting an unacceptable threat to safety or the environment, it shall require the recognised organisation concerned to undertake the necessary preventive and remedial action within specified deadlines to ensure full compliance with those minimum criteria and obligations and, in particular, remove any potential threat to safety or the environment, or to otherwise address the causes of the worsening performance.

The preventive and remedial action may include interim protective measures when the potential threat to safety or the environment is immediate.

However, and without prejudice to their immediate implementation, the Commission shall give to all Member States which have granted an authorisation to the recognised organisation concerned, advance notice of the measures that it intends to take.

Article 6

1. In addition to the measures taken under Article 5, the Commission may, in accordance with the advisory procedure referred to in Article 12(2), impose fines on a recognised organisation:

(a) whose serious or repeated failure to fulfil the minimum criteria set out in Annex I or its obligations under Articles 8 (4), 9, 10 and 11 or whose worsening performance reveals serious shortcomings in its structure, systems, procedures or internal controls;

or

(b) which has deliberately provided incorrect, incomplete or misleading information to the Commission in the course of its assessment pursuant to Article 8(1) or otherwise obstructed that assessment.

2. Without prejudice to paragraph 1, where a recognised organisation fails to undertake the preventive and remedial action required by the Commission, or incurs unjustified delays, the Commission may impose periodic penalty payments on that organisation until the required action is fully carried out.

3. The fines and periodic penalty payments referred to in paragraphs 1 and 2 shall be dissuasive and proportionate to both the gravity of the case and the economic capacity of the recognised organisation concerned, taking into account, in particular, the extent to which safety or the protection of the environment has been compromised.

They shall be imposed only after the recognised organisation and the Member States concerned have been given the opportunity to submit their observations.

The aggregate amount of the fines and periodic penalty payments imposed shall not exceed 5 % of the total average turnover of the recognised organisation in the preceding three business years for the activities falling under the scope of this Regulation.

4. The Court of Justice of the European Communities shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 7

1. The Commission shall withdraw the recognition of an organisation:

(a) whose repeated and serious failure to fulfil the minimum criteria set out in Annex I or its obligations under this Regulation is such that it constitutes an unacceptable threat to safety or the environment;

(b) whose repeated and serious failure in its safety and pollution prevention performance is such that it constitutes an unacceptable threat to safety or the environment;

(c) which prevents or repeatedly obstructs the assessment by the Commission;

(d) which fails to pay the fines and/or periodic penalty payments referred to in Article 6(1) and (2); or

(e) which seeks to obtain financial cover or reimbursement of any fines imposed on it pursuant to Article 6.

2. For the purpose of points (a) and (b) of paragraph 1, the Commission shall decide on the basis of all the available information, including:

(a) the results of its own assessment of the recognised organisation concerned pursuant to Article 8(1);

(b) reports submitted by Member States pursuant to Article 10 of Directive .../.../EC;

(c) analyses of casualties involving ships classed by the recognised organisations;

(d) any recurrence of the shortcomings referred to in point (a) of Article 6(1);

(e) the extent to which the fleet in the recognised organisation's class is affected; and

(f) the ineffectiveness of the measures referred to in Article 6 (2).

3. Withdrawal of recognition shall be decided by the Commission, upon its own initiative or at the request of a Member State, in accordance with the regulatory procedure referred to in Article 12(3) and after the recognised organisation concerned has been given the opportunity to submit its observations.

Article 8

1. All the recognised organisations shall be assessed by the Commission, together with the Member State which submitted the relevant request for recognition, on a regular basis and at least every two years to verify that they meet the obligations under this Regulation and fulfil the minimum criteria set out in Annex I. The assessment shall be confined to those activities of the recognised organisations, which fall within the scope of this Regulation.

2. In selecting the recognised organisations for assessment, the Commission shall pay particular attention to the safety and pollution prevention performance of the recognised organisation, to the casualty records and to the reports produced by Member States in accordance with Article 10 of Directive .../.../EC.

3. The assessment may include a visit to regional branches of the recognised organisation as well as random inspection of ships, both in service and under construction, for the purpose of auditing the recognised organisation's performance. In this case the Commission shall, where appropriate, inform the Member State in which the regional branch is located. The Commission shall provide the Member States with a report on the results of the assessment.

4. Each recognised organisation shall make available the results of its quality system management review to the Committee referred to in Article 12(1), on an annual basis.

Article 9

1. Recognised organisations shall ensure that the Commission has access to the information necessary for the purposes of the assessment referred to in Article 8(1). No contractual clauses may be invoked to restrict this access.

2. Recognised organisations shall ensure in their contracts with shipowners or operators for the issue of statutory certificates or class certificates to a ship that such issue shall be made conditional on the parties not opposing the access of the Commission inspectors on board that ship for the purposes of Article 8(1).

Article 10

1. The recognised organisations shall consult with each other periodically with a view to maintaining equivalence and aiming for harmonisation of their rules and procedures and the implementation thereof. They shall cooperate with each other with a view to achieving consistent interpretation of the international conventions, without prejudice to the powers of the flag States. Recognised organisations shall, in appropriate cases, agree on the technical and procedural conditions under which they will mutually recognise the certificates for materials, equipment and components based on equivalent standards, taking the most demanding and rigorous standards as their reference.

In case mutual recognition cannot be agreed upon for serious safety reasons, recognised organisations shall clearly state the reasons thereof.

Where a recognised organisation ascertains by inspection or otherwise that material, a piece of equipment or a component is not in compliance with its certificate, that organisation may refuse to authorise the placing on board of that material, piece of equipment or component. The recognised organisation shall immediately inform the other recognised organisations, stating the reasons for its refusal.

Recognised organisations shall recognise, for classification purposes, certificates of marine equipment bearing the wheel-mark in accordance with Council Directive 96/98/EC of 20 December 1996 on marine equipment ⁽¹⁾.

They shall provide the Commission and the Member States with periodic reports on fundamental progress in standards and mutual recognition of certificates for materials, equipment and components.

2. The Commission shall submit a report to the European Parliament and the Council by ... (*) based on an independent study, on the level reached in the process of harmonising the rules and procedures and on mutual recognition of certificates for materials, equipment and components.

3. The recognised organisations shall cooperate with port State control administrations where a ship of their class is concerned, in particular in order to facilitate the rectification of reported deficiencies or other discrepancies.

4. The recognised organisations shall provide to all Member States' administrations which have granted any of the authorisations provided for in Article 3 of Directive .../.../EC and to the Commission all relevant information about their classed fleet, transfers, changes, suspensions and withdrawals of class, irrespective of the flag the ships fly.

Information on transfers, changes, suspensions, and withdrawals of class, including information on all overdue surveys, overdue recommendations, conditions of class, operating conditions or operating restrictions issued against their classed ships, irrespective of the flag the ships fly, shall also be communicated electronically to the common inspection database used by the Member States for the implementation of Directive .../.../EC at the same time as it is recorded within the recognised organisation's own systems and in any case no later than 72 hours after the event that gave rise to the obligation to communicate the information. That information, with the exception of recommendations and conditions of class which are not overdue, shall be published on the website of these recognised organisations.

5. The recognised organisations shall not issue statutory certificates to a ship, irrespective of its flag, which has been declassified or is changing class for safety reasons, before giving the opportunity to the competent administration of the flag State to give its opinion within a reasonable time as to whether a full inspection is necessary.

6. In cases of transfer of class from one recognised organisation to another, the losing organisation shall, without undue delay, provide the gaining organisation with the complete history file of the ship and, in particular, inform it of:

(a) any overdue surveys;

(b) any overdue recommendations and conditions of class;

⁽¹⁾ OJ L 46, 17.2.1997, p. 25. Directive as last amended by Directive 2002/84/EC (OJ L 324, 29.11.2002, p. 53).

(*) Five years from the entry into force of this Regulation.

- (c) operating conditions issued against the ship; and
- (d) operating restrictions issued against the ship.

New certificates for the ship can be issued by the gaining organisation only after all overdue surveys have been satisfactorily completed and all overdue recommendations or conditions of class previously issued in respect of the ship have been completed as specified by the losing organisation.

Prior to the issue of the certificates, the gaining organisation must advise the losing organisation of the date of issue of the certificates and confirm the date, place and action taken to satisfy each overdue survey, overdue recommendation and overdue condition of class.

Recognised organisations shall establish and implement appropriate common requirements concerning cases of transfer of class where special precautions are necessary. Those cases shall, as a minimum, include the transfer of class of ships of 15 years of age or over and the transfer from a non-recognised organisation to a recognised organisation.

Recognised organisations shall cooperate with each other in properly implementing the provisions of this paragraph.

Article 11

1. Recognised organisations shall set up by ... (*) and maintain an independent Quality Assessment and Certification System in accordance with the applicable international quality standards where the relevant professional associations working in the shipping industry may participate in an advisory capacity.
2. The Quality Assessment and Certification System shall carry out the following tasks:
 - (a) periodic assessment of the quality management systems of recognised organisations, in accordance with the ISO 9001 quality standard criteria;
 - (b) certification of the quality management systems of recognised organisations, including organisations for which recognition has been requested in accordance with Article 3;
 - (c) issue of interpretations of internationally recognised quality management standards, in particular to take account of the specific features of the nature and obligations of recognised organisations; and
 - (d) drawing up of individual and collective recommendations for the improvement of recognised organisations' processes and internal control mechanisms.
3. The Quality Assessment and Certification System shall have the necessary governance and competences to act independently of the recognised organisations and shall have

(*) 24 months after the date of entry into force of this Regulation.

the necessary means to carry out its duties effectively and to the highest professional standards. The Quality Assessment and Certification System will lay down its working methods and rules of procedure.

4. The Quality Assessment and Certification System shall adopt an annual work plan.
5. The Quality Assessment and Certification System may request assistance from other external quality assessment bodies.
6. The Quality Assessment and Certification System shall provide the interested parties, including Flag States and the Commission, with full information on its annual work plan as well as on its findings and recommendations, particularly with regard to situations where safety might have been compromised.
7. The Quality Assessment and Certification System shall be periodically assessed by the Commission.
8. The Commission shall report to the Member States on the results and follow-up of its assessment.

Article 12

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) established by Regulation (EC) No 2099/2002 ⁽¹⁾.
 2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
 3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
- The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.
4. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 13

1. This Regulation may, without broadening its scope, be amended in order to update the minimum criteria set out in Annex I taking into account, in particular, the relevant decisions of the IMO.

These measures designed to amend non-essential elements of this Regulation shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

⁽¹⁾ OJ L 324, 29.11.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 93/2007 (OJ L 22, 31.1.2007, p. 12).

2. Amendments to the international conventions defined in Article 2(b) of this Regulation may be excluded from the scope of this Regulation, pursuant to Article 5 of Regulation (EC) No 2099/2002.

Article 14

1. The Commission shall adopt and publish:
 - (a) criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards the safety of, and the prevention of pollution from, their classed ships, having particular regard to the data produced by the Paris Memorandum of Understanding on Port State Control and/or by other similar schemes; and
 - (b) criteria to determine when such performance is to be considered an unacceptable threat to safety or the environment, which may take into account specific circumstances affecting smaller-sized or highly specialised organisations.

These measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

2. The measures designed to amend non-essential elements of this Regulation by supplementing it relating to the implementation of Article 6 and, if appropriate, Article 7 shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(4).

3. Without prejudice to the immediate application of the minimum criteria set out in Annex I, the Commission may, in accordance with the regulatory procedure referred to in Article 12(3), adopt rules on their interpretation and may consider the establishment of objectives for the general minimum criteria referred to in point 3, Part A of Annex I.

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

Done at ...

For the European Parliament
The President

...

Article 15

1. The organisations which, at the entry into force of this Regulation, had been granted recognition in accordance with Directive 94/57/EC shall retain their recognition, subject to the provisions of paragraph 2.

2. Without prejudice to Articles 5 and 7, the Commission shall re-examine all limited recognitions granted under Directive 94/57/EC in light of Article 4(3) of this Regulation by ... (*), with a view to deciding, in accordance with the regulatory procedure referred to in Article 12(3), whether the limitations are to be replaced by others or removed. The limitations shall continue to apply until the Commission has taken a decision.

Article 16

In the course of the assessment pursuant to Article 8(1), the Commission shall verify that the holder of the recognition is the relevant legal entity within the organisation to which the provisions of this Regulation shall apply. If that is not the case, the Commission shall take a decision amending that recognition.

Where the Commission amends the recognition, the Member States shall adapt their agreements with the recognised organisation to take account of the amendment.

Article 17

The Commission shall, on a biennial basis, inform the European Parliament and the Council on the application of this Regulation.

Article 18

References in Community and national law to Directive 94/57/EC shall be construed, as appropriate, as being made to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 19

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

For the Council
The President

...

(*) Twelve months after the entry into force of this Regulation.

ANNEX I

MINIMUM CRITERIA FOR ORGANISATIONS**(Referred to in Article 3)****A. GENERAL MINIMUM CRITERIA**

1. A recognised organisation must have legal personality in the State of its location. Its accounts shall be certified by independent auditors.
2. The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.
3. The recognised organisation must be equipped at all times with significant managerial, technical, support and research staff commensurate with the size of the fleet in its class, its composition and the organisation's involvement in the construction and conversion of ships. The recognised organisation must be capable of assigning to every place of work, when and as needed, means and staff commensurate with the tasks to be carried out in accordance with general minimum criteria under points 6 and 7 and with the specific minimum criteria under part B.
4. The recognised organisation must have and apply a set of own comprehensive rules and procedures, or the demonstrated ability thereto, for the design, construction and periodic survey of merchant ships, having the quality of internationally recognised standards. They must be published and continually upgraded and improved through research and development programmes.
5. The recognised organisation must have its register of ships published on an annual basis or maintained in an electronic base accessible to the public.
6. The recognised organisation must not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The recognised organisation is not substantially dependent on a single commercial enterprise for its revenue. The recognised organisation does not carry out class or statutory work if it is identical to or has business, personal or family links to the shipowner or operator. This incompatibility shall also apply to surveyors employed by the recognised organisation.
7. The recognised organisation must operate in accordance with the provisions set out in the Annex to IMO Resolution A.789(19) on specifications on the survey and certification functions of recognised organisations acting on behalf of the administration, insofar as they cover matters falling within the scope of this Regulation.

B. SPECIFIC MINIMUM CRITERIA

1. The recognised organisation must provide worldwide coverage by its exclusive surveyors or, in exceptional and duly justified cases, through exclusive surveyors of other recognised organisations.
2. The recognised organisation must be governed by a code of ethics.
3. The recognised organisation must be managed and administered in such a way as to ensure the confidentiality of information required by the administration.
4. The recognised organisation must provide relevant information to the administration, to the Commission and to the interested parties.
5. The recognised organisation, its surveyors and its technical staff shall carry out their work without in any way harming the intellectual property rights of shipyards, equipment suppliers, and shipowners, including patents, licences, know-how, or any other kind of knowledge whose use is legally protected at Community or national level; under no circumstances, and without prejudice to the assessment powers of Member States and the Commission and in particular under Article 9, may either the recognised organisation or the surveyors and technical staff, whom it employs pass on or divulge commercially relevant data obtained in the course of their work of inspecting, checking, and monitoring ships under construction or repair.
6. The recognised organisation's management must define and document its policy and objectives for, and commitment to, quality and must ensure that this policy is understood, implemented and maintained at all levels in the recognised organisation. The recognised organisation's policy must refer to safety and pollution prevention performance targets and indicators.

7. The recognised organisation must ensure that:
 - (a) its rules and procedures are established and maintained in a systematic manner;
 - (b) its rules and procedures are complied with and an internal system to measure the quality of service in relation to these rules and procedures is put in place;
 - (c) the requirements of the statutory work for which the recognised organisation is authorised are satisfied and an internal system to measure the quality of service in relation to compliance with the international conventions is put in place;
 - (d) the responsibilities, powers and interrelation of personnel whose work affects the quality of the recognised organisation's services are defined and documented;
 - (e) all work is carried out under controlled conditions;
 - (f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed by the recognised organisation;
 - (g) surveyors have an extensive knowledge of the particular type of ship on which they carry out their work as relevant to the particular survey to be carried out and of the relevant applicable requirements;
 - (h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
 - (i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system;
 - (j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations;
 - (k) the statutory surveys and inspections required by the Harmonised System of Survey and Certification for which the recognised organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.948(23) on Survey Guidelines under the Harmonised System of Survey and Certification;
 - (l) clear and direct lines of responsibility and control are established between the central and the regional offices of the recognised organisation and between the recognised organisations and their surveyors.
 8. The recognised organisation must have developed, implemented and must maintain an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN ISO/IEC 17020:2004 (inspection bodies) and with EN ISO 9001:2000 (quality management systems, requirements), as interpreted and certified by the Quality Assessment and Certification System referred to in Article 11(1).
 9. The rules and procedures of the recognised organisation must be implemented in such a way that the organisation remains in a position to derive from its own direct knowledge and judgement a reliable and objective declaration on the safety of the ships concerned by means of class certificates on the basis of which statutory certificates can be issued.
 10. The recognised organisation must have the necessary means of assessing, through the use of qualified professional staff and pursuant to the provisions set out in the Annex to IMO Resolution A.913(22) on Guidelines on implementation of the International Safety Management (ISM) Code by administrations, the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.
 11. The recognised organisation must allow participation in the development of its rules and procedures by representatives of the administration and other parties concerned.
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ANNEX II

CORRELATION TABLE

Directive 94/57/EC	Directive .../.../EC	This Regulation
Article 1	Article 1	Article 1
Article 2(a)	Article 2(a)	Article 2(a)
Article 2(b)	Article 2(b)	—
Article 2(c)	Article 2(c)	—
Article 2(d)	Article 2(d)	Article 2(b)
Article 2(e)	Article 2(e)	Article 2(c)
—	Article 2(f)	Article 2(d)
Article 2(f)	Article 2(g)	Article 2(e)
Article 2(g)	Article 2(h)	Article 2(f)
Article 2(h)	Article 2(i)	Article 2(g)
Article 2(i)	Article 2(k)	Article 2(i)
—	Article 2(j)	Article 2(h)
Article 2(j)	Article 2(l)	—
Article 2(k)	—	Article 2(j)
Article 3	Article 3	
Article 4(1) first phrase	—	Article 3(1)
Article 4(1) second phrase	-	Article 3(2)
Article 4(1) third phrase	-	—
Article 4(1) fourth phrase	-	Article 4(1)
—	-	Article 3(3)
—	-	Article 4(2), (3), (4)
-	-	Article 5
-	-	Article 6
-	-	Article 7
Article 5(1)	Article 4(1)	-
Article 5(3)	Article 4(2)	-
Article 6(1), (2), (3), (4)	Article 5(1), (2), (3), (4)	-
Article 6(5)	—	-

Directive 94/57/EC	Directive .../.../EC	This Regulation
Article 7	Article 6	Article 12
Article 8(1) first indent	Article 7(1), point (a) of first subparagraph	-
Article 8(1) second indent	—	Article 13(1)
Article 8(1) third indent	Article 7(1), point (b) of first subparagraph	-
—	Article 7(1) second subparagraph	Article 13(1) second subparagraph
Article 8(2)	Article 7(2)	-
Article 8(2) second subparagraph	-	Article 13(2)
Article 9(1)	-	-
Article 9(2)	-	-
Article 10(1) introductory wording	Article 8	-
Article 10(1)(a), (b), (c), (2), (3), (4)	—	—
Article 11(1), (2)	Article 9(1), (2)	-
Article 11(3), (4)	-	Article 8(1), (2)
Article 12	Article 10	-
Article 13	—	—
Article 14	Article 11(1), (2)	-
—	Article 11(3)	-
-	Article 12	-
—	-	Article 9
Article 15(1)	-	-
-	-	Article 10(1), (2)
Article 15(2)	-	Article 10(3)
Article 15(3)	—	Article 10(4)
Article 15(4)	-	Article 10(5)
Article 15(5)	-	Article 10(6) first, second, third, fifth subparagraphs
—	-	Article 10(6) fourth subparagraph
Article 16	Article 13	—
Article 17	Article 16	—
—	Article 14	—
—	Article 15	—

Directive 94/57/EC	Directive .../.../EC	This Regulation
-	-	Article 11
-	-	Article 14
-	-	Article 15
-	-	Article 16
-	-	Article 17
-	-	Article 18
-	-	Article 19
Annex	-	Annex I
-	Annex I	-
-	Annex II	Annex II

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

In the framework of the codecision procedure (art. 251 TEC), the Council reached, on 30 November 2007, a political agreement on two separate legal instruments based on the related Commission proposal ⁽¹⁾: a draft Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (recast) and a Regulation on common rules and standards for ship inspection and survey organisations (recast). This document concerns the part of the Commission proposal that constitutes the recast Regulation. ⁽²⁾

Following legal/linguistic revision, the Council adopted its common position on 6 June 2008.

In taking its position, the Council took account of the opinions of the European Economic and Social Committee ⁽³⁾ and of the Committee of Regions ⁽⁴⁾. A large number of the European Parliament's amendments, adopted at first reading on 25 April 2007 ⁽⁵⁾, were integrated or reflected in the related text, whether it forms part of the Directive or the Regulation according to the Council's position.

The proposal aims at recasting successive amendments to Directive 94/57/EC establishing common rules and standards for organisations that inspect ships and issue ships' certificates, the so-called 'recognised organisations'. Furthermore, certain provisions of the existing Directive are amended with a view to simplification or harmonisation or in order to reinforce the current rules, e.g. by strengthening the control of recognised organisations and by reforming the system of penalties against those that do not fulfil the minimum recognition criteria.

II. ANALYSIS OF THE COMMON POSITION

(a) Form of the legal act

The main issue raised during the discussions in the Council bodies was the form of the legal act proposed by the Commission. Several provisions in the proposed Directive must be understood to either impose obligations directly or devolve competence on the Commission to impose such obligations on individuals, in this case the recognised organisations. This was confirmed by the Council Legal Service in its opinion of 8 October 2007 (doc. 13616/07) that advised to adopt the act in the form of a Regulation or, alternatively, to redraft the provisions in question or to split the act into one Directive and one Regulation.

In its political agreement, the Council agreed to split the text into two separate instruments, a Directive and a Regulation. The Directive includes the provisions addressed to the Member States concerning their relationship with recognised organisations, while the Regulation contains all provisions related to the recognition at Community level, i.e. the granting and the withdrawal of the recognition by the Commission, the obligations and criteria to be fulfilled by the organisations to be eligible for Community recognition as well as possible sanctions against recognised organisations that fail to fulfil these obligations and criteria.

(b) Main issues related to the Regulation

Apart from the decision to include all provisions related to the Community recognition of ship inspection and survey organisations in a new Regulation, the Council deemed appropriate to modify these provisions for reasons of clarity or based on the following considerations:

⁽¹⁾ The Commission transmitted on 30 January 2006 its proposal for a recast Directive on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (doc. 5912/06 MAR 11 ENV 50 CODEC 95).

⁽²⁾ The Council's common position on the draft Directive is set out in doc. 5724/08, the related statement of reasons in doc. 5724/08 ADD 1.

⁽³⁾ CESE 1177/2006 of 13.9.2006 (OJ C 318 of 23.12.2006, p.195-201).

⁽⁴⁾ CdR 43/2006 of 15.6.2006 (OJ C 229 of 22.9.2006, p.38).

⁽⁵⁾ Doc. 8724/07 CODEC 389 MAR 28 ENV 206 (not yet published in the Official Journal).

1) *Scope of recognition and minimum recognition criteria*

The Council, as the European Parliament, considers it important to emphasize that the organisation to be recognised, regardless of its corporate structure, should provide services worldwide. In case of a limited recognition, the common position provides for transparency as to the reasons of the limitation and the conditions to modify it. To avoid any downgrading of the minimum criteria for the recognition, the common position foresees the possibility to fix, through the comitology procedure, rules on the interpretation of, and objectives for, these criteria, in particular concerning the number of staff members to be employed by the recognised organisations.

2) *Imposition of fines against recognised organisations*

In the Council's view the Member States are to be informed through the advisory procedure about any decision to be taken by the Commission in order to impose fines against recognised organisations that do not fulfil their obligations under the Regulation.

3) *Harmonisation of rules and procedures of recognised organisations and mutual recognition of certificates issued by them*

The Council approves the Commission's proposal to encourage recognised organisations to further harmonise their rules and procedures and to consider when to mutually recognise their certificates for materials, equipment and components. The common position includes, however, a set of safeguard clauses. The latter relate to cases where the mutual recognition of certificates cannot be agreed upon between recognised organisations or to cases where it has been confirmed that material, a piece of equipment or a component is not in compliance with its certificate.

In line with the European Parliament, the Commission is asked to provide a report on the level reached in the process of harmonisation of the rules and procedures of recognised organisations and on mutual recognition of certificates issued by them.

4) *Assessment and certification of the quality management systems of recognised organisations*

The Council fully agrees with the broad outlines of the Commission's proposal that recognised organisations set up an entity responsible for the assessment and certification of their quality management systems. Mostly in line with the European Parliament's amendment, the Council emphasizes in the common position that this should be done in accordance with the applicable international quality standards and following the advice from the relevant professional associations working in the shipping industry.

Further modifications by the Council of the provisions related to this Quality Assessment and Certification System aim in particular at streamlining the tasks of this entity and clarifying that it must have the necessary governance and competences to act independently of the recognised organisations.

5) *Introduction of the regulatory procedure with scrutiny*

In accordance with the amended Comitology Decision ⁽¹⁾, the Council introduces in its common position the regulatory procedure with scrutiny to amend the Regulation according to amendments to the international conventions, protocols, codes and resolutions, to update the minimum recognition criteria and to adopt criteria to measure the effectiveness of the rules and procedures as well as the performance of the recognised organisations as regards safety and pollution prevention.

III. AMENDMENTS

The common position incorporates a large number of the European Parliament's first-reading amendments, either verbatim or partly or in principle: 6, 11, 12, 15, 16, 17, 18, 20, 25, 26, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 50, 52, 53, 54, 55, 56, 59, 60, 61, 62, 64, 66, 68, 69, 71 and 74. The related provisions are often consistent with the amendments, but not identical, due to the necessary adaptation of the text resulting from the splitting of the original proposal into two separate instruments.

⁽¹⁾ Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, as amended by Council Decision 2006/512/EC of 17 July 2006 (OJ L 200, 22.7.2006, p. 11.)

The remaining amendments could not be accepted because, in the Council's view, they are not consistent with the procedures of Community recognition (amendment 14), not entirely clear or seem to be redundant (amendments 19, 23, 57 and 67) or are not consistent with the Council's approach to the setting up of the entity responsible for the assessment and certification of the quality management systems of recognised organisations (amendments 63, 65 and partly 74).

IV. CONCLUSION

The Council believes that its common position is the appropriate way to lay down provisions related to the recognition of ship inspection and survey organisations at Community level by adopting a Regulation, accompanied by a Directive providing for measures to be followed by Member States in their relationship with these organisations.

The text of the common position reflects a large number of the European Parliament's amendments. The Council looks forward to engaging in constructive discussions with the European Parliament with a view to reaching an agreement as soon as possible.

COMMON POSITION (EC) No 19/2008**adopted by the Council on 6 June 2008****with a view to adopting Regulation (EC) No .../2008 of the European Parliament and of the Council
of ... on the liability of carriers of passengers by sea in the event of accidents****(Text with EEA relevance)**

(2008/C 190 E/02)

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⁾,

Whereas:

- (1) Within the framework of the common transport policy, further measures need to be adopted in order to enhance safety in maritime transport. These 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 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 Organization (IMO). The Community and its Member States are in the process of deciding whether to accede to or ratify that Protocol.
- (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'), applies to international transport only. The distinction between national and international transport has been eliminated within the internal market for 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 Legal Committee of the IMO adopted on 19 October 2006 the IMO Reservation and Guidelines

for the Implementation of the Athens Convention (hereinafter referred to as 'the IMO Guidelines') to address some issues within the Athens Convention, in particular, compensation for terrorism-related damage and, as such, the IMO Guidelines may be considered as *lex specialis*.

- (5) This Regulation incorporates and makes binding parts of the IMO Guidelines. To that end, in the provisions of the IMO Guidelines, in particular, the verb 'should' should be understood as 'shall'.
- (6) 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.
- (7) The matters covered by Articles 17 and 17bis of the Athens Convention fall within the exclusive competence of the European Community insofar 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 ⁽⁴⁾. To that extent, these two provisions will form part of the Community legal order when the European Community accedes to the Athens Convention.
- (8) For the purpose of this Regulation the expression 'or is registered in a Member State' should be interpreted in the sense that the flag state under the concept of bareboat charter-out registration is to be either a Member State or a contracting party to the Athens Convention. Necessary steps should be undertaken by the Member States and the Commission to invite the IMO to develop guidelines on the concept of bareboat charter-out registration.
- (9) For the purpose of this Regulation the expression 'mobility equipment' should be considered neither as luggage nor vehicles in the sense of Article 8 of the Athens Convention.
- (10) 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 ⁽⁵⁾.

⁽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 (not yet published in the Official Journal), Council Common Position of 6 June 2008 and Position of the European Parliament of ... (not yet published in the Official Journal). Council Decision of ... (not yet published in the Official Journal)

⁽⁴⁾ OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

⁽⁵⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (11) 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.
- (12) The European Maritime Safety Agency, established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 ⁽¹⁾, should assist the Commission in preparing and drafting a progress report on the functioning of the new rules.
- (13) In order to fulfil their obligations under this Regulation, Member States may consider ratifying the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, and make use of the option provided for in Article 15(3bis) of that Convention to regulate, by specific provisions of this Regulation, the system of limitation of liability to be applied to passengers.
- (14) 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 the need to ensure identical limits of liability in the event of accidents 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 that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation lays down the Community regime relating to liability and insurance for the carriage of passengers by sea as set out in the relevant provisions of:

- (a) the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002 (hereinafter referred to as 'the Athens Convention') as set out in Annex I, and

⁽¹⁾ OJ L 208, 5.8.2002, p. 1. Regulation as last amended by Regulation (EC) No 1891/2006 (OJ L 394, 30. 12.2006, p. 1).

- (b) IMO Reservation and Guidelines for Implementation of the Athens Convention adopted by the Legal Committee of the IMO on 19 October 2006 (hereinafter referred to as 'the IMO Guidelines') as set out in Annex II.

Furthermore, this Regulation extends the application of those provisions to carriage of passengers by sea within a single Member State on board ships covered by Class A in accordance with Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships ⁽²⁾ and lays down certain supplementary requirements.

Article 2

Scope

This Regulation shall apply to any international carriage within the meaning of Article 1(9) of the Athens Convention and to carriage by sea within a single Member State on board ships covered by Class A in accordance with Article 4 of Directive 98/18/EC, if:

- (a) the ship is flying the flag of or is registered in a Member State; or
- (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.

Member States may apply this Regulation to all domestic sea going voyages.

Article 3

Liability and insurance

1. The liability regime in respect of passengers, their luggage and their vehicles and the rules on insurance or other financial security shall be governed by this Regulation and by Articles 1 and 1bis, Article 2(2), Articles 3 to 16 and 18, 20 and 21 of the Athens Convention set out in Annex I and the provisions of the IMO Guidelines set out in Annex II.

2. The IMO Guidelines as set out in Annex II shall be binding.

Article 4

Compensation in respect of mobility equipment or other specific equipment

In the event of loss of, or damage to, mobility equipment or other specific equipment used by a passenger with reduced mobility, the carrier's liability shall be governed by Article 3(3) of the Athens Convention. The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, the costs relating to repairs.

⁽²⁾ OJ L 144, 15.5.1998, p. 1. Directive as last amended by Commission Directive 2003/75/EC (OJ L 190, 30.7.2003, p. 6).

Article 5

Global limitation of liability

This Regulation shall not modify the rights or duties of the carrier, or the performing carrier, under national legislation implementing the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, including any future amendment to that Convention.

In respect of claims for loss of life or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines the carrier and the performing carrier may limit their liability pursuant to the provisions referred to in the first paragraph provided that the limit of liability calculated according to those provisions shall not exceed, on each distinct occasion, 340 million SDR (Special Drawing Rights) per incident, or 250 000 SDR per passenger, whichever is the lower amount.

Article 6

Advance payment

Where the death of, or personal injury to, a passenger has been caused by a shipping incident within the territory of a Member State, or has occurred on board a ship that was flying the flag of a Member State or is registered in a Member State, if applicable, the carrier who actually performed the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis proportional to the damage suffered, 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.

This provision shall also apply if the carrier is established within the Community.

An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation but is not returnable, except in the cases prescribed in Article 3(1) or Article 6 of the Athens Convention or Appendix A of the IMO Guidelines or where the person who received the advance payment was not the person entitled to damages.

Article 7

Information to passengers

The carrier and/or performing carrier shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation at the latest on

departure. To the extent that the information obligation under this Article has been fulfilled either by the carrier or the performing carrier, the other shall not be obliged to report. That information shall be provided in the most appropriate format.

In order to comply with this information requirement, the carrier and performing carrier may use a summary of the provisions of this Regulation prepared by the Commission and made public.

Article 8

Report

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

Article 9

Procedure

The measures designed to amend non-essential elements of this Regulation relating to the incorporation of amendments to the limits set out in Article 3(1), Article 4bis(1), Article 7(1) and Article 8 of the Athens Convention to take account of decisions taken pursuant to Article 23 of the Athens Convention and corresponding updates of Annex I shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10(2).

The measures designed to amend non-essential elements of this Regulation relating to the incorporation of amendments to the provisions of the IMO Guidelines set out in Annex II shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 10(2).

Article 10

Committee procedure

1. The Commission shall be assisted by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 ⁽¹⁾.

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

⁽¹⁾ OJ L 324, 29.11.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 93/2007 (OJ L 22, 31.1.2007, p. 12).

*Article 11***Transitional provision**

In respect of carriage by sea within a single Member State on board ships covered by Class A in accordance with Article 4 of Directive 98/18/EC, Member States may choose to defer application of this Regulation until four years after the date of its application.

*Article 12***Entry into force**

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

It shall apply from the date of the entry into force of the Athens Convention for the Community.

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

Done at ...,

For the European Parliament
The President

...

For the Council
The President

...

ANNEX I

Provisions of the Athens Convention relating to the carriage of passengers and their luggage by sea relevant for the application of this Regulation

(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; and
- (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. [...] (*)

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.

(*) Not reproduced.

*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 organization 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 on which notification to that effect was given to the Secretary-General.

- (c) The institution or organization authorised to issue certificates in accordance with this paragraph shall, as a minimum, be authorised to withdraw these certificates if the conditions under which they have been issued are not complied with. In all cases the institution or organisation 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 entitled 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 (*)***Article 17bis***Recognition and enforcement (*)**

(*) Not reproduced.

*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 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.

[Articles 22 and 23 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974]

*Article 22***Revision and amendment (*)***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 4bis, 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 4bis, 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.

(*) Not reproduced.

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.

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.

ANNEX II

Extract from the Imo Reservation and Guidelines for Implementation of the Athens Convention, adopted by the Legal Committee of the International Maritime Organization on 19 October 2006**Imo Reservation and Guidelines for Implementation of the Athens Convention**

Reservation

1. The Athens Convention should be ratified with the following reservation or a declaration to the same effect:
- ‘[1.1.] Reservation in connection with the ratification by the Government of ... of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (“the Convention”)

Limitation of liability of carriers, etc.

- [1.2.] The Government of ... reserves the right to and undertakes to limit liability under paragraph 1 or 2 of Article 3 of the Convention, if any, in respect of death of or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:
 - 250 000 units of account in respect of each passenger on each distinct occasion,
 - or
 - 340 million units of account overall per ship on each distinct occasion.
- [1.3.] Furthermore, the Government of ... reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention paragraphs 2.1.1 and 2.2.2 *mutatis mutandis*, to such liabilities.
- [1.4.] The liability of the performing carrier pursuant to Article 4 of the Convention, the liability of the servants and agents of the carrier or the performing carrier pursuant to Article 11 of the Convention and the limit of the aggregate of the amounts recoverable pursuant to Article 12 of the Convention shall be limited in the same way.
- [1.5.] The reservation and undertaking in paragraph 1.2 will apply regardless of the basis of liability under paragraph 1 or 2 of Article 3 and notwithstanding anything to the contrary in Article 4 or 7 of the Convention; but this reservation and undertaking do not affect the operation of Articles 10 and 13.

Compulsory insurance and limitation of liability of insurers

- [1.6.] The Government of ... reserves the right to and undertakes to limit the requirement under paragraph 1 of Article 4bis to maintain insurance or other financial security for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:
 - 250 000 units of account in respect of each passenger on each distinct occasion,
 - or
 - 340 million units of account overall per ship on each distinct occasion.
- [1.7.] The Government of ... reserves the right to and undertakes to limit the liability of the insurer or other person providing financial security under paragraph 10 of Article 4bis, for death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention, to a maximum limit of the amount of insurance or other financial security which the carrier is required to maintain under paragraph 1.6 of this reservation.
- [1.8.] The Government of ... also reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention including the application of the clauses referred to in paragraphs 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.
- [1.9.] The Government of ... reserves the right to and undertakes to exempt the provider of insurance or other financial security under paragraph 1 of Article 4bis from any liability for which he has not undertaken to be liable.

Certification

- [1.10.] The Government of ... reserves the right to and undertakes to issue insurance certificates under paragraph 2 of Article 4bis of the Convention so as:
 - to reflect the limitations of liability and the requirements for insurance cover referred to in paragraphs 1.2, 1.6, 1.7 and 1.9; and
 - to include such other limitations, requirements and exemptions as it finds that the insurance market conditions at the time of the issue of the certificate necessitate.
- [1.11.] The Government of ... reserves the right to and undertakes to accept insurance certificates issued by other States Parties issued pursuant to a similar reservation.

- [1.12.] All such limitations, requirements and exemptions will be clearly reflected in the Certificate issued or certified under paragraph 2 of Article 4bis of the Convention.

Relationship between this Reservation and the IMO Guidelines for Implementation of the Athens Convention

- [1.13.] The rights retained by this reservation will be exercised with due regard to the IMO Guidelines for Implementation of the Athens Convention, or to any amendments thereto, with an aim to ensure uniformity. If a proposal to amend the IMO Guidelines for Implementation of the Athens Convention, including the limits, has been approved by the Legal Committee of the International Maritime Organization, those amendments will apply as from the time determined by the Committee. This is without prejudice to the rules of international law regarding the right of a State to withdraw or amend its reservation.'

Guidelines

2. In the current state of the insurance market, State Parties should issue insurance certificates on the basis of one undertaking from an insurer covering war risks, and another insurer covering non-war risks. Each insurer should only be liable for its part. The following rules should apply (the clauses referred to are set out in Appendix A):
 - 2.1. Both war and non-war insurance may be subject to the following clauses:
 - 2.1.1. Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Weapons Exclusion Clause (Institute clause No 370);
 - 2.1.2. Institute Cyber Attack Exclusion Clause (Institute clause No 380);
 - 2.1.3. The defences and limitations of a provider of compulsory financial security under the Convention as modified by these guidelines, in particular the limit of 250 000 units of account per passenger on each distinct occasion;
 - 2.1.4. The proviso that the insurance shall only cover liabilities subject to the Convention as modified by these guidelines; and
 - 2.1.5. The proviso that any amounts settled under the Convention shall serve to reduce the outstanding liability of the carrier and/or its insurer under Article 4 bis of the Convention even if they are not paid by or claimed from the respective war or non-war insurers.
 - 2.2. War insurance shall cover liability, if any; for the loss suffered as a result of death or personal injury to passenger caused by:
 - war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, or any hostile act by or against a belligerent power,
 - capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat,
 - derelict mines, torpedoes, bombs or other derelict weapons of war,
 - act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk,
 - confiscation and expropriation,
 and may be subject to the following exemptions, limitations and requirements:
 - 2.2.1. War Automatic Termination and Exclusion Clause
 - 2.2.2. In the event the claims of individual passengers exceed in the aggregate the sum of 340 million units of account overall per ship on any distinct occasion, the carrier shall be entitled to invoke limitation of his liability in the amount of 340 million units of account, always provided that:
 - this amount should be distributed amongst claimants in proportion to their established claims,
 - the distribution of this amount may be made in one or more portions to claimants known at the time of the distribution, and
 - the distribution of this amount may be made by the insurer, or by the Court or other competent authority seized by the insurer in any State Party in which legal proceedings are instituted in respect of claims allegedly covered by the insurance.
 - 2.2.3. 30 days notice clause in cases not covered by 2.2.1.
- 2.3. Non-war insurance should cover all perils subject to compulsory insurance other than those risks listed in 2.2, whether or not they are subject to exemptions, limitations or requirements in 2.1 and 2.2.
3. An example of a set of insurance undertakings (Blue Cards) and an insurance certificate, all reflecting these guidelines, are included in Appendix B.

APPENDIX A

Clauses referred to in Guidelines 2.1.1, 2.1.2 AND 2.2.1

Institute Radioactive Contamination, Chemical, Biological, Bio-chemical and Electromagnetic Exclusion Clause (Cl. 370, 10/11/2003)

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from:
 - 1.1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
 - 1.2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
 - 1.3. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
 - 1.4. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes;
 - 1.5. any chemical, biological, bio-chemical, or electromagnetic weapon.

Institute Cyber Attack Exclusion Clause (Cl. 380, 10/11/03)

1. Subject only to clause 10.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
2. Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, Clause 10.1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

War Automatic Termination and Exclusion

- 1.1. Automatic Termination of Cover

Whether or not such notice of cancellation has been given cover hereunder shall TERMINATE AUTOMATICALLY

 - 1.1.1. upon the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;
 - 1.1.2. in respect of any vessel, in connection with which cover is granted hereunder, in the event of such vessel being requisitioned either for title or use.
- 1.2. Five Powers War

This insurance excludes

 - 1.2.1. loss damage liability or expense arising from the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;
 - 1.2.2. requisition either for title or use.

Appendix B

I. Examples of insurance undertakings (Blue Cards) referred to in guideline 3

Blue Card issued by War Insurer

Certificate furnished as evidence of insurance pursuant to Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Name of Ship:

IMO Ship Identification Number:

Port of registry:

Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, *subject to all exceptions and limitations allowed for compulsory war insurance under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent desirable]*

Period of insurance from: 20 February 2007

to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving 30 days written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by:

War Risks, Inc

[Address]

.....
(Signature of insurer)

As agent only for War Risks, Inc.

Blue Card issued by Non-War Insurer

Certificate furnished as evidence of insurance pursuant to Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

Name of Ship:

IMO Ship Identification Number:

Port of registry:

Name and Address of owner:

This is to certify that there is in force in respect of the above named ship while in the above ownership a policy of insurance satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, *subject to all exceptions and limitations allowed for non-war insurers under the Convention and the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006, including in particular the following clauses: [Here the text of the Convention and the guidelines with appendices can be inserted to the extent desirable]*

Period of insurance from: 20 February 2007

to: 20 February 2008

Provided always that the insurer may cancel this certificate by giving three months written notice to the above Authority whereupon the liability of the insurer hereunder shall cease as from the date of the expiry of the said period of notice but only as regards incidents arising thereafter.

Date:

This certificate has been issued by:

PANDI P&I

[Address]

.....
(Signature of insurer)

As agent only for PANDI P&I

II. Model of certificate of insurance referred to in guideline 3

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)

The insurance cover hereby certified is split in one war insurance part and one non-war insurance part, pursuant to the implementation guidelines adopted by the Legal Committee of the International Maritime Organization in October 2006. Each of these parts of the insurance cover is subject to all exceptions and limitations allowed under the Convention and the implementation guidelines. The insurers are not jointly and severally liable. The insurers are:

For war risks: War Risks, Inc., [address]

For non-war risks: Pandi P&I, [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.
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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

In November 2005, the Commission adopted its proposal ⁽¹⁾ 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 European 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 6 June 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').

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.

⁽¹⁾ Doc. 6827/06 — COM(2005) 592 final

⁽²⁾ OJ C 2006/318, 2.3.12.2006

⁽³⁾ OJ C 2006/229, 22.9.2006

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.
