



EUROPEAN PARLIAMENT

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*Plenary sitting*

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**A7-0356/2011**

17.10.2011

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## **RECOMMENDATION**

on the draft Council decision concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof

(08663/2011 – C7-0142/2011 – 2003/0132A(NLE))

Committee on Transport and Tourism

Rapporteur: Brian Simpson

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council decision concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof (08663/2011 – C7-0142/2011 – 2003/0132A(NLE))**

**(Consent)**

*The European Parliament,*

- having regard to the draft Council decision (08663/2011),
  - having regard to the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 (08663/2011),
  - having regard to the request for consent submitted by the Council in accordance with Article 100(2), Article 218(6) second subparagraph, point (a), and Article 218(8) first subparagraph, of the Treaty on the Functioning of the European Union (C7-0142/2011),
  - having regard to Rules 81 and 90(7) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on Transport and Tourism and the opinion of the Committee on Legal Affairs (A7-0356/2011),
1. Consents to accession to the Protocol;
  2. Instructs its President to forward its position to the Council, the Commission, the governments and parliaments of the Member States, and the International Maritime Organization.

## EXPLANATORY STATEMENT

### Introduction

The accession to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea is a longstanding issue followed up by the EU and by the Parliament, in particular.

The Convention itself dates back to 1974 with the safety of passenger ships and passenger rights lying at its heart. It was, however, considered that the Convention regulated insufficiently a number of substantive issues including the nature and extent of the carriers' liability and minimum requirements on insurance.

Under the aegis of the International Maritime Organisation (IMO), the Protocol, which was adopted on 1 November 2002, amended the Athens Convention in a way that it satisfied key elements such as liability in case of fault or neglect by the carrier, compulsory insurance and the right to make claims directly against the insurer. The compensation of terrorism related damages is addressed by IMO Guidelines and a reservation to the Protocol.

Considering that most of the desirable elements were then covered by the Protocol, the Commission proposed in 2003 that the European Community became a contracting party to the Protocol of 2002 and that the Member States should do likewise. Negotiations within the Council on the conclusion were suspended however, and were only resumed in December 2007.

In view of the conclusion of the Protocol and aiming at incorporating most of the substantive provisions into EC law, the Commission presented a complementary Regulation in November 2005 on the liability of carriers of passengers by sea in the event of accidents. After four years of negotiations, the European Parliament and the Council reached an agreement on the Regulation ((EC) No 392/2009), which was adopted on 23 April 2009. It will apply no later than 2013.

In November 2010, the Commission presented an amended proposal for a Council Decision concerning the accession of the EU to the Protocol of 2002 to the Athens Convention taking into account the changes since 2003.

The adoption of the Regulation 392/2009 entails that the Union now has exclusive competence to accede to the Athens Protocol as far as the matters covered by the Regulation are concerned.

All other aspects of the Protocol which are not covered by the Regulation belong to the competence of Member States. Example: Provisions concerning the power to fix higher limits of liability than those provided for in the Protocol. The Agreement is therefore a mixed agreement and needs ratification by Member States.

In order to achieve a coherent legal framework throughout the Union both Member States and the Union should, if possible, prepare the simultaneous deposit of their instruments of

ratification or accession by 31 December 2011.

### Legal basis

Most of the provisions of the Protocol are maritime transport issues, the reason why the Commission has chosen Article 100 TFEU as the only legal basis for its proposal for a Council Decision.

The Council, on the contrary, has decided to divide the Decision into two separate acts, one for transport (Article 100) relating to the accession to the Protocol with the exception of Articles 10 and 11 thereof, and one for judicial cooperation in civil matters (Article 81) relating to the accession to the Protocol as regards Articles 10 and 11 thereof. According to the Council, the split of the legal basis is justified by the fact that Articles 10 and 11 of the Protocol regulate matters which affect rules of the Union on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Those provisions fall within the scope of title V of Part Three of the TFEU. Consequently, and in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the TFEU, Denmark is not taking part in the adoption of the Council's Decision as regards Articles 10 and 11. Denmark will be bound by these Articles of the Protocol only as a separate Contracting Party.

At the time of the deposit of the instrument of accession, the Union shall make a declaration of competence on the issue.

With regard to the procedure which applies in the case of international agreements, the accession to the Protocol is submitted for Parliament's consent.

Article 218 (6) (a) of the TFEU applies accordingly.

Furthermore, according to Article 81 of its Rules of Procedure, the Parliament shall take a decision on international agreements by means of a single vote, and no amendments to the agreement itself may be tabled.

Based on the fact that the Council has adopted two separate acts relating to the accession of the European Union to the Protocol, Parliament gives its opinion in the framework of two resolutions, one presented by the Committee on Transport and Tourism, the other one by the Committee on Legal Affairs.

On the basis of the above-mentioned your Rapporteur suggests that the Committee on Transport and Tourism should give a favourable opinion on the conclusion of this agreement.

10.10.2011

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Transport and Tourism

on the draft Council decision concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof  
(08663/2011 – C7-0142/2011 – 2003/0132A(NLE))

Rapporteur: Klaus-Heiner Lehne

PA\_Leg\_Consent

### SHORT JUSTIFICATION

The Committee on Legal Affairs is according to Annex VII of the Rules of Procedure responsible for, *inter alia*, the interpretation and application of Union law and compliance of Union acts with primary law, notably the choice of legal bases, the interpretation and application of international law, in so far as the Union is affected, and measures concerning judicial and administrative cooperation in civil matters.

Since Articles 10 and 11 of the Athens Protocol concern questions relating to competent jurisdiction and recognition and enforcement of judgments, the relevant substantive legal basis for the accession to those Articles is Article 81(1) TFEU on judicial cooperation in civil matters. A separate Council Decision having that legal basis relating to Articles 10 and 11 is therefore to be adopted in parallel to this Decision and the Committee on Legal Affairs is responsible for drafting the European Parliament legislative resolution on that Decision.

The other Articles of the Athens Protocol concern amendments to the Athens Convention regarding liability of a carrier, compulsory insurance, limit for liability for death and personal injury or for loss of or damage to luggage and vehicles and accounting and conversion issues. These are all issues relating to transport.

Regulation (EC) 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents<sup>1</sup> was adopted in order to incorporate these amendments to the Athens Convention. Recital 11 of the Regulation specifies that those matters covered by Articles 10 and 11 of the Protocol will form part of the

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<sup>1</sup> OJ L 131, 28.5.2009, p. 24.



Union legal order when it accedes to the Athens Convention, in so far as they 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<sup>1</sup>. The division into two Council Decisions for the accession to the Athens Protocol, one for transport issues and one for judicial cooperation in civil matters, is therefore proper.

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The Committee on Legal Affairs calls on the Committee on Transport and Tourism, as the committee responsible, to propose that Parliament give its consent.

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<sup>1</sup> OJ L 12, 16.1.2001, p. 1.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	10.10.2011
<b>Result of final vote</b>	+: 18 -: 0 0: 0
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Sajjad Karim, Antonio Masip Hidalgo, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Diana Wallis
<b>Substitute(s) present for the final vote</b>	Kurt Lechner, Toine Manders, Paulo Rangel
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Pablo Zalba Bidegain

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	11.10.2011
<b>Result of final vote</b>	+: 39 -: 0 0: 1
<b>Members present for the final vote</b>	Inés Ayala Sender, Georges Bach, Izaskun Bilbao Barandica, Antonio Cancian, Michael Cramer, Ryszard Czarnecki, Philippe De Backer, Luis de Grandes Pascual, Christine De Veyrac, Saïd El Khadraoui, Ismail Ertug, Carlo Fidanza, Knut Fleckenstein, Jacqueline Foster, Mathieu Grosch, Dieter-Lebrecht Koch, Georgios Koumoutsakos, Werner Kuhn, Jörg Leichtfried, Marian-Jean Marinescu, Gesine Meissner, Mike Natrass, Hubert Pirker, David-Maria Sassoli, Vilja Savisaar-Toomast, Olga Sehnalová, Debora Serracchiani, Brian Simpson, Keith Taylor, Silvia-Adriana Țicău, Georgios Toussas, Giommara Uggias, Thomas Ulmer, Peter van Dalen, Dominique Vlasto, Artur Zasada, Roberts Zīle
<b>Substitute(s) present for the final vote</b>	Dominique Riquet, Laurence J.A.J. Stassen
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Margrete Auken