



EUROPEAN COMMISSION

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2003/0132 (NLE)

Amended proposal for a

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

EXPLANATORY MEMORANDUM

1. Objective of the original proposal

The proposal for the Council Decision - COM (2003) 375 - AVC/2003/0132 - was presented by the Commission on 24 June 2003.

The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 (hereafter "the Athens Protocol") adopted under the auspices of the International Maritime Organization ("hereafter IMO") is a mixed agreement. The main objective of the Commission proposal was that the Community should become a Contracting Party to the Athens Protocol and that the Member States should do likewise before the end of 2005.

2. Stage of procedures

Negotiations on this proposal within the Council started but were suspended in December 2003 because of a dispute between the Kingdom of Spain and the United Kingdom relating to the Gibraltar authorities in the context of mixed agreements. This dispute was solved in December 2007 and the negotiations on this proposal are to resume.

The competent Council working party worked upon a text before negotiations were suspended (Council document 15836.03). This amended proposal builds upon this text.

3. Objective of the amended proposal

Since the presentation of the proposal (June 2003) and the moment when the negotiations were suspended (December 2003) until today, the context has substantially changed. The amended proposal takes into account these changes as follows:

- In 2003, the Community had exclusive competence to accede to the Athens Protocol as far as its Article 10 and 11 were concerned. These provisions regulate matters which affect rules of the Union as laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter "the Brussels Regulation")¹. The Brussels Regulation was based on Title IV of the EC Treaty. The proposal for the Council Decision was therefore based on Article 65 in conjunction with Article 300(2), first subparagraph and Article 300(3), second subparagraph of the EC Treaty. In November 2005, the Commission presented a complementary proposal for an EP and Council Regulation incorporating most of the other substantive provisions of the Athens Protocol into EC law (COM(2005)592), based on Article 80(2) of the EC Treaty. The adoption of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents² (hereinafter 'the Athens Regulation') entails that the Union now has exclusive competence to accede to the Athens Protocol as far as the matters covered by the Athens Regulation are concerned. The principal component of the Athens Protocol concerns maritime transport whilst the jurisdictional rules are to be regarded as an ancillary component. Having regard to the fact that on 1st December 2009 the

¹ OJ L 12, 16.1.2001, p.1. The Brussels Regulation is binding upon all EU Member States, with the exception of Denmark.

² OJ L 131, 28.5.2009, p. 24.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community¹ entered into force, therefore, the legal basis for the Council Decision should be changed into Article 100(2) in conjunction with Article 218 of the Treaty on the Functioning of the European Union (hereinafter "the TFEU").

- The Athens Regulation does not incorporate all the provisions of the Athens Protocol. The Athens Protocol remains a mixed agreement where individual Member States are still required to become contracting parties to it. It is indeed most desirable to avoid that the dates of entry into force of the Athens Protocol differ in each Member State. To that end, Member States and the Union should deposit their instruments of accession (or of ratification for those who already signed the Athens Protocol) on the same day. This corresponds to the solution found with a recent comparable Council Decision². The proposed Council Decision has been amended along this line.
- In October 2006, the Legal Committee of the IMO adopted guidelines for the implementation of the Athens Protocol, recommending a reservation for terrorist related damages, in order to take into account the current state of the insurance market. Member States have politically committed themselves to make this reservation. With the adoption of the Athens Regulation, the IMO Guidelines fall within the exclusive competence of the Union. The Union will therefore make the reservation when acceding to the Protocol and this has to be provided for in the Council Decision.

At the latest stages of the discussions within the Council on the proposed Athens Regulation (November 2007), some delegations questioned the functioning of the disconnection clause of Article 11 of the Athens Protocol and insisted that the legislation of the Union should clarify this. This was eventually not included in the political agreement. It is suggested adding a declaration on the disconnection clause to the Council Decision.

¹ OJ C 306, 17.12.2007

² Decision 2008/431/EC of 5 June 2008 authorizing certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorizing certain Member States to make a declaration on the application of the relevant internal rules of Community law, OJ L 151, 11.6.2008, p. 36

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) and Article 218 thereof

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament,

- (1) The Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, (the "Athens Protocol") represents a major improvement to the regime relating to the liability of carriers and the compensation of passengers carried by sea. In particular, it provides for a strict liability for the carrier and includes compulsory insurance with a right of direct action against insurers up to specified limits. The Protocol is therefore in accordance with the Union's objective of improving the legal regime relating to carriers' liability.
- (2) The Athens Protocol modifies the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and establishes in Article 15 that the two instruments shall, as between the Parties to the Athens Protocol, be read and interpreted together as one single instrument.
- (3) The majority of the rules of the Athens Protocol have been incorporated into the law of the Union by Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents¹. Thus the Union exerted competence as regards these matters. Member States retain their competence regarding a number of provisions of the Athens Protocol, such as the opt out clause whereby they are allowed to fix limits of liability higher than those prescribed under the Athens Protocol. The latter matters are interdependent with the matters falling under the competence of the Union, and taking into account the duty of cooperation, the Member States should act in a coordinated way also in those matters.
- (4) Articles 10 and 11 of the Athens Protocol regulate matters which affect rules of the Union as laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial

¹ OJ L 131, 28.5.2009, p. 24.

matters¹. The Union thus has also exclusive competence as regards Articles 10 and 11 of the Athens Protocol.

- (5) Upon the accession of the European Union to the Athens Protocol, the rules on jurisdiction set out in its Article 10 take precedence over the relevant internal rules of the Union. The rules on recognition and enforcement of judgments in place between Member States and between Member States and the Parties to the 1988 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or to any Convention replacing it, should take precedence over those provided in Article 11, since the effect of the former is to ensure that judgments are recognised and enforced at least to the same extent as under the rules of the Athens Protocol.
- (6) The Athens Protocol is open for ratification, acceptance, approval or accession by States and by Regional Economic Integration Organisations which are constituted by sovereign States that have transferred competence over certain matters governed by the Protocol to those Organisations.
- (7) According to Article 17(2)(b) and Article 19 of the Athens Protocol, Regional Economic Integration Organisations may conclude the Protocol.
- (8) The Legal Committee of the International Maritime Organization adopted in October 2006 Reservation and Guidelines for Implementation of the Athens Protocol (hereinafter referred to as "IMO Guidelines") to address some issues within the Athens Protocol, in particular, compensation for terrorism related damages.
- (9) Regulation (EC) No 392/2009 reproduces in its annexes the consolidated version of the Athens Convention as amended by the Protocol and the IMO Guidelines.
- (10) Under the terms of Article 19 of the Athens Protocol, a Regional Economic Integration Organisation must declare at the time of signature, ratification, acceptance, approval or accession the extent of its competence in respect of the matters governed by the Protocol.
- (11) The Union, in consequence, should accede to the Athens Protocol.
- (12) The Member States which are to ratify or accede to the Convention should do so simultaneously. The Member States should therefore exchange information on the state of their ratification or accession procedures in order to prepare the simultaneous deposit of their instruments of ratification or accession,

HAS ADOPTED THIS DECISION:

Article 1

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, (the "Athens Protocol") is hereby approved on behalf of the European Union.

¹ OJ L 12, 16.1.2001, p.1.

Article 2

1. The President of the Council is hereby authorized to designate the person or persons empowered to accede to the Athens Protocol in accordance with Articles 17(2)(c) 17(3) and 19 of that Protocol.
2. At the time of accession, the Union shall make the following declaration of competence:

"1. Article 19 of the Athens Protocol of 2002 provides that Regional Economic Integration Organizations which are constituted by sovereign States and which have competence over certain matters governed by this Protocol may sign it on condition that they make the declaration referred to in that Article. The Union has decided to conclude the Protocol and is accordingly making that declaration.

2. The current Members of the European Union are the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland.

3. This declaration is not applicable in the case of the territories of the Member States in which the Treaty on the Functioning of the European Union (TFEU) does not apply and is without prejudice to such acts or positions as may be adopted under the Protocol by the Member States concerned on behalf of and in the interests of those territories.

4. The Member States of the European Union have conferred competences to the Union as regards matters covered by Article 100 of the TFEU: Articles 1 and 1 bis, Article 2(2), Articles 3 to 16 and 18, 20 and 21 of the Athens Convention as amended by the Athens Protocol and the provisions of the IMO Guidelines. The Union exercised this competence by the adoption of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents.

5. The Member States of the European Union, with the exception of the Kingdom of Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the TFEU, have conferred competences to the Union in particular as regards matters covered by Article 81 of the TFEU. The Union exercised this competence by the adoption of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

6. The exercise of competence which the Member States have transferred to the Union pursuant to the TFEU is, by its nature, liable to continuous development. In the framework of the Treaty, the competent institutions may take decisions which determine the extent of the competence of the European Union. The European Union

therefore reserves the right to amend the present declaration accordingly, without this constituting a prerequisite for the exercise of its competence with regard to matters governed by the Protocol. "

3. At the time of conclusion, the Union shall make the following declaration ad Article 11(3) of the Protocol:

"Judgments on matters covered by the Athens Protocol, when given by a court of a Member State or of a Contracting Party to the 1988 Lugano Convention or to any Convention replacing it on the same matter, continue to be recognized and enforced in another Member State in accordance with the relevant internal rules of the Union on the subject, including when applicable the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and the 1988 Lugano Convention or to any Convention replacing it on the same matter. Article 11 of the Athens Protocol therefore only applies to the recognition and enforcement of judgments given in Contracting States other than Member States of the European Union, Switzerland, Norway, and Iceland."

4. The person or persons designated as under paragraph 1 shall make the reservation contained in the IMO Guidelines when depositing the instrument of accession of the Union to the Athens Protocol.

Article 3

The Union and the Member States shall deposit their instruments of accession to the Athens Protocol or of ratification for those who already signed it on 31 December 2011.

Done at Brussels,

*For the Council
The President*