



European Maritime Safety Agency

Directive 2009/20/EC*on the insurance of shipowners
for maritime claims*

1

Regulation (EC) 392/2009*on the liability of carriers of
passengers by sea in the event
of accident*

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Relevant International legislation

- Convention on Limitation of Liability for Maritime Claims (LLMC), and its Protocol of 1996
- Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974 and its Protocol of 2002

2



Directive 2009/20/EC

*on the insurance of
shipowners for
maritime claims*

3

Directive 2009/20/EC

On one side:

9 October 2008 - Unanimous recognition by EU MSs for the importance of the application of the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 and its Protocol of 1996

4

On the other side:

- **LLMC 1976 ratified by:** IRE, NETH, PL
- **Protocol 1996 ratified by:** BE, BUL, CY, DK, EST, FIN, FR, GE, GR, HU, LUX, LAT, LIT, MT, ESP, RO, SWE, UK + NO, ICE
- **No ratification by:** AUS, CSR, IT, PT, SK, SL

Directive 2009/20/EC

To ensure:

- that all ships (both of Third countries) calling at European port have an insurance
- better protection for victims

Directive 2009/20/EC
Adopted on 23 April 2009

5

To help:

Eliminate substandard ships and re-establish fair competition between operators in the Region

Directive 2009/20/EC

Initially: *Proposal* for a Directive on the civil liability and financial guarantees of shipowners (11/2005)

Art. 1-2: The scope

Directive lays down rules applicable to certain aspects of the obligations on shipowners as regards their insurance

6

Exclusions:

- Ships of less than 300 GT
- Warship and non-commercial State owned ships
- without prejudice to the regimes established by CLC 1992, HNS 1996, Bunker Oil Conv. 2001.



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Directive 2009/20/EC

Art. 3 – Definitions

Shipowner: registered owner of a seagoing ship, or any other person such as the bareboat charterer who is responsible for the operation of the ship

7

Insurance: which comprises for example indemnity insurance of the type currently provided by members of P&I Clubs and other effective forms of insurance and financial security

1996 Convention: consolidated text of the 1976 LLMC Convention



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Directive 2009/20/EC

Each MS shall require that **shipowners flying its flag** have insurance covering such ships

AND

Ships flying a flag other than its own when such ships enter a port under a MS jurisdiction.

8

Proposal: "as soon as that ship enters its exclusive economic area or equivalent area"

The insurance shall cover maritime claims subject to **limitation of LLMC 1996** (*Proposal: double*)



International
LLMC liability limits (for loss of life & personal injury)

Limit for loss of life and personal injuries under LLMC 1976 = 167000 up to 500 t	LLMC 1996 (Property Claims)	LLMC 1996 (Loss of life and personal injuries)
Up to 2000 t	1 000 000 SDR (1 SDR = 1,23 Euro on 13 th July)	2 000 000 SDR (1 SDR = 1,23 Euro on 13 th July)
From 2001 t To 30 000 t	400 SDR per ton	800 SDR per ton
From 30001 t To 70 000 t	300 SDR per ton	600 SDR per ton
Above 70 000 t	200 SDR per ton	400 SDR per ton

The currency value of the SDR is determined by summing the values in U.S. dollars, based on market exchange rates, of a basket of major currencies (the U.S. dollar, Euro, Japanese yen, and pound sterling). The SDR currency value is calculated daily (except on or whenever the IMF is closed for business) and the valuation basket is reviewed and adjusted every five years.

9



Directive 2009/20/EC

Article 6 : Insurance certificates

The existence of the insurance will be proved by certificate(s) issued by the insurance provider

10

They will contain certain minimum information (data on the ship, shipowner and insurance provided, as well as type and duration of insurance)

Certificates shall be carried on board – translation in English, French or Spanish.



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Directive 2009/20/EC

Article 5 – Inspection and compliance

MS shall ensure inspections in ports (PSC) to verify that the certificate of insurance is carried on board

11

If it is not, the competent authority may issue an **expulsion order** (notify to Comm., other MS and flag State) – the ship will be refused entry to ports of other MS

Also **detention** – on the basis of the Port State Control Directive



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Article 7 – Penalties

MS shall lay down a system of penalties for the breach of national provisions adopted to implement the Directive and shall take all necessary measures to ensure that those penalties are applied.

12

Penalties should be effective, proportionate and dissuasive

International: Financial guarantee for civil liability

- LLMC does not provide for obligatory insurance
- In maritime transport following int. conventions provide for obligatory civil liability insurance: CLC 1992, HNS 1996, Bunker Oil 2001, Wreck Removal 2007
- IMO Guidelines on shipowners' responsibilities in respect of maritime claims [Resolution A.898(21)] – advise shipowners to have such insurance
- EC Law in other transport sectors - yes: **air** (Reg. no 2407/92 on licensing of air carriers + Reg. no 785/2004 on insurance requirements for air carriers and aircraft operators)
- Non-EU national systems: **US** – since 1970s obligatory civil liability insurance for all vessels above 300 GT entering the EEZ of the US; **Australia** – since 2001 obligatory civil liability insurance for all vessels above 400 GT transporting oil as cargo or bunker oil entering an Australian port; **Japan** – since 2005 obligatory civil liability insurance for all vessels above 100 GT entering a Japanese port.

13



Regulation (EC) 392/2009

*on the liability of
carriers of passengers
by sea in the vent of
accident*

14



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Regulation 392/2009

Need to adopt measures enhancing safety in maritime transport which include liability rules for damages caused to passengers ensuring a proper level of compensation for passengers involved in maritime accidents

15

International legislation regime set up by the Athens Convention

EU Ratifications of the Athens Convention Relating to the Carriage of Passengers and their luggage by Sea 1974/2002

1974: BE, EST, GR, IRE, LUX, PL, ESP, UK

2002: LAT



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Regulation No 392/2009

Initially *Proposal* for a Regulation on liability of carriers of passengers by sea and **inland waterways** in the event of accidents (11/2005)

The Regulation lays down the Community regime relating to liability and insurance **for the carriage of passengers by sea**

16

The regime is equivalent to that of the **Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974**, as amended by the Protocol of 2002 and IMO Reservation and Guidelines for Implementation of the Athens Convention

Annex 1 contains the consolidated text of the Athens Convention



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Regulation No 392/2009

Article 3 – Liability and insurance

The liability regime in respect of passengers, their luggage and their vehicles and the rules on insurance shall be governed by:

17

- the Regulation, and
- some articles of the consolidated text of the Athens Convention [1, 1bis, 2(2), 3-16, 18, 20 and 21]
- the IMO guidelines (made mandatory) as set out in the Annex II



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International Athens 1974 - Basis and limits of liability

Fault-based liability: the carrier is liable for personal injury/death to passenger and loss/damage to luggage in the course of carriage due to the fault or neglect of carrier and his servant

Burden of proof that the incident causing damage occurred in the course of carriage and the extent of the damage – **on the claimant**....unless in connection with shipwreck, collision, stranding, explosion or fire

18

Liability of the carrier - limits

- 46 666 SDR for personal injury/death,
- 833 SDR for cabin luggage,
- 3333 SDR for vehicle, and
- 1200 SDR for other luggage



International

Athens 2002 - Basis and limits of liability

Strict liability: The carrier is liable for personal injury/death of passengers caused **by shipping incident** up to 250 000 SDR unless the carrier proves that the incident resulted from i.a. an act of war (...) or was **wholly** caused by an act or omission done with the intent to cause the incident by a third party.

19

Fault-based liability: If and to the extent that the damage exceeds the above limit, the carrier is further liable if the incident was due to his fault or neglect – the burden of proof is on the claimant (up to 400 000 SDR per passenger.)

Fault-based liability: If the damage is caused **by a non shipping incident**, the carrier is liable if it was caused by his fault or neglect – the burden of proof is on the claimant (up to 400 000 SDR per passenger.).



INTERNATIONAL

Athens 2002 – Limits of liability, continued

Limits of liability for:

- cabin luggage 2 250 SDR
- vehicle 12 700 SDR
- other luggage 3 375 SDR

per passenger

20

Loss of right to limit the liability: "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".

INTERNATIONAL

Athens 2002 - Compulsory Insurance

- Carrier is to maintain insurance or other financial security (bank guarantee or similar) to cover liability in respect of death and personal injury to passengers according to the Convention: not less than 250 000 SDR per passenger. The Convention contains detailed provisions on the certificates attesting the insurance
- Direct action against the insurer or other person providing financial security

21

Guidelines for the Implementation of the Convention (IMO LEG 92)

capping the liability for terrorism related claims to 250 000 SDR per passenger and 340 million SDR per ship on each distinct occasion (whichever is lower).

European Union

Strict liability and compulsory insurance: other modes of transport

Air transport: Reg. 889/ 2002 on air carrier liability in the event of accidents

- "There are no financial limits to the liability for passenger injury or death. For damages up to 100 000 SDR (...) the air carrier cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault".
- luggage up to 1 000 SDR.

22

Railway transport: Proposal for a Regulation on International Rail Passengers' Rights and Obligations COM/2004/0143

- strict liability up to 220 000 euro in case of death or injury to passengers. Above that amount the railway will not be liable if it proves that it was not negligent or at fault;
- hand luggage up to 1 800 euro, other luggage – 1 300 euro per passenger.

Regulation - Scope

Art. 2: International carriage by sea on board of ships classes A and B where:

- The ship is flying the flag or is registered in a MS;
- The contract of carriage has been made in a MS;
- The place of departure or destination, according to the contract of carriage is in a MS.

23

MS **may** apply this Reg. to all domestic sea-going voyages.

Proposal

Regulation on liability of carriers of passengers by sea and **inland waterways** in the event of accidents

Preamble, point 5: "In the internal maritime market, the distinction between national and international transport has been eliminated.....".

It "extends the application of those provisions to carriage by sea within a single MS and to international and domestic carriage by inland waterways" (art. 1)

24

Art. 2: "shall apply to any international or domestic carriage, by sea or inland waterway, if:

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



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Regulation

Mobility equipment

Article 4

In the event of loss or damage to mobility equipment or medical equipment used by a passenger with reduced mobility (...) the compensation shall correspond to the replacement value of the equipment or (..) to the costs relating to repairs.

25



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Regulation

Advance payments

Article 6

Where the death of, or personal injury to, a passenger is caused by a shipping incident, the carrier who actually performed the whole or a part of the carriage when the shipping incident occurred shall make an advance payment sufficient to cover immediate economic needs on a basis proportionate to the damage suffered within 15 days from the identification of the person entitled to damages.

In the event of death, the payment shall not be less than 21,000 Euro.

26

**An advance payment shall not
constitute recognition of liability**

International and EC Advance payments

- Convention for the Unification of Certain Rules for International Carriage by Air, Montreal 1999 (art. 28)
- Reg. no 889/2002 on air carrier liability in the event of accidents: art. 5 – death: min. 16 000 SDR.
- Comm Proposal for a Regulation on International Rail Passengers' Rights and Obligations: art. 13 – death: min 21 000 euro.

27

Regulation Information to passengers

Article 7

Without prejudice to the obligations of tour operators as in Directive 90/314 the carrier and/or performing carrier shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights

28

Information: at least the summary of the provision of this Regulation

Place of departure in a MS

- if the contract of carriage is made in a MS, the information is to be provided at all points of sale including telephone and Internet
- Prior departure

Place of departure not in a MS

- At least on departure



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Regulation Information to passengers

Proposal

Information on personal injury or loss and damage of luggage, on their right of direct action against the insurer or the person providing financial security and on their entitlement to an advance payment.

29

EC

- Reg. 889/2002 on air carrier liability in the event of accidents (art. 6)
- Comm. Proposal for a Regulation on International Rail Passengers' Rights and Obligations (art. 3).



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Regulation

entry into force 29 May 2009

30

Applicable by **31 December 2012** (at the latest)



E u r o p e a n M a r i t i m e S a f e t y A g e n c y

**Thank you for
your attention!!!**

31