

KPI Information Update IU-67-2014
(2002 Passenger ship treaty entered into force)

The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, which substantially raises the limits of liability for the death of, or personal injury to a passenger on a ship & Empowering national courts to compensate for death, injury or damage; entered into force on 23 April 2014.

The higher limits of liability will apply to ships registered in the following States which have ratified the 2002 treaty:

Albania, Belgium, Belize, Bulgaria, Croatia, Denmark, Greece, Latvia, Malta, the Netherlands, Norway, Palau, Panama, Saint Kitts and Nevis, Serbia, Syrian Arab Republic and the United Kingdom.

The Convention is mandatory for European Union Member States (including those that have not ratified the Athens Protocol regime yet as individual States) to the extent that the European Union has competence over matters governed by the Protocol, as the European Union has ratified the treaty under a novel article in the Protocol which allows for a Regional Economic Integration Organization, which is constituted by sovereign States that have transferred competence over certain matters governed by this Protocol to that Organization, to sign, ratify, accept, approve or accede to the Protocol.

The 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, (PAL), revises and updates the 1974 Convention, which established a regime of liability for damage suffered by passengers

carried on a seagoing vessel. As a precondition for joining, Parties to the 2002 Protocol are required to denounce the 1974 treaty and its earlier Protocols.

The Athens Convention declares a carrier liable for damage suffered by a passenger resulting from death, personal injury or damage to luggage if the incident causing the damage occurred in the course of the carriage and was due to the fault or neglect of the carrier. Such fault or neglect is presumed, unless the contrary is proved.

Carriers can limit their liability unless they acted with intent to cause such damage, or recklessly and with knowledge that such damage would probably result. For the death of, or personal injury to, a passenger, this limit of liability was set at 46,666 Special Drawing Rights (SDR) per carriage in the 1974 convention.

In case of shipping incidents the 2002 Protocol substantially raises those limits to 250,000 SDR per passenger on each distinct occasion, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or was wholly caused by an act or omission done with the intent to cause the incident by a third party.

If the loss exceeds this limit, and also in case of non-shipping incidents, the carrier is further liable - up to a combined limit of 400,000 SDR per passenger on each distinct occasion - unless the carrier proves that the incident which caused the loss

occurred without the fault or neglect of the carrier.

As far as loss of, or damage to luggage is concerned, the carrier's limit of liability varies, depending on whether the loss or damage occurred in respect of cabin luggage, of a vehicle and/or luggage carried in or on it, or in respect of other luggage.

- The liability of the carrier for the loss of or damage to cabin luggage is limited to 2,250 SDR per passenger, per carriage.
- Liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle is limited to 12,700 SDR per vehicle, per carriage.
- Liability of the carrier for the loss of or damage to other luggage is limited to 3,375 SDR per passenger, per carriage.

The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 SDR in the case of damage to a vehicle and not exceeding 149 SDR per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

The 2002 Athens Convention also introduces compulsory insurance, as well as mechanisms to assist passengers in obtaining compensation, based on well-accepted principles applied in existing liability and compensation regimes dealing with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents, backed by the requirement that the carrier take out compulsory insurance to cover these potential claims.

Ships are to be issued with a certificate attesting that insurance or other financial security is in force and a model certificate is attached to the Protocol in an Annex.

The limits contained in the Protocol set a maximum limit, empowering - but not obliging - national courts to compensate for death, injury or damage up to these limits. The Protocol also includes an "opt-out" clause, enabling State Parties to retain or introduce higher limits of liability (or unlimited liability) in the case of carriers who are subject to the jurisdiction of their courts.



► Amendment of limits:

The 2002 Protocol introduces a tacit acceptance procedure for raising the limits of liability, whereby a proposal to amend the limits would be circulated on the request of at least one-half of the Parties to the Protocol, and adopted by a two-thirds majority of the States Parties. Amendments would then enter into force within 36 months unless not less than one fourth of the States Parties at the time of the adoption informed that they did not accept the amendment.