



Direção-Geral de Recursos Naturais,
Segurança e Serviços Marítimos

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| Subject: | Implementation of Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents |
| To: | Owners, Shipowners, Operators, Companies, Masters and Skippers of Portuguese flagged vessels, Insurers, recognized Organizations |

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***References:** Regulation (EC) No 392/2009 of the European Parliament and of the Council, 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents. Decree-Law n.º 13/2015, 14 July approving for accession to the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 2002. Notice n.º 11/2016, 7 April public communication that the Government of the Portuguese Republic has deposited its instrument of ratification regarding the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 2002, and has made a reservation regarding Limitation of Liability of the Carrier from an act of war, obligation of compulsory insurance. IMO Circular Letter n.º 2758 “Guidelines for the implementation of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002”.*

1. OBJECTIVE

The aim of this circular is to inform about the obligation of existence on board each vessel, after 31 December 2012, of an Insurance Certificate, which shall be compliant with the provisions of Regulation (EC) No 392/2009.

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2. INTRODUCTION

2.1 Regulation (EC) No 392/2009, hereinafter the Regulation, creates within the European Union (EU) a liability and insurance regime for carriers of passengers by sea in the event of an accident. This is to ensure that ships sailing under the flag of a Member State of the European Union (EU) or the European Economic Area (EEA) or Third Countries, with destination or which are calling EU and/or EEA ports are holders of their Certificate of Insurance for the carriage of passengers by sea issued by the Maritime Administration of one of the States party to the Athens Convention on the basis of an Insurance Policy or any other Financial Guarantee intended for the same purpose.

This Regulation reproduces provisions of the 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, as amended by the Protocol of 2002 considered as the "2002 Athens Convention", as well as of the reservation made by the Portuguese Republic, by Notice 11/2016 of 7 April, and also by the International Maritime Organization (IMO) Guidelines for the implementation of the Athens Convention adopted by the IMO Legal Committee on 19 October 2006.

2.2 The 2002 Protocol substantially increases the limits of liability of the ship vis-à-vis the 1974 Athens Convention, which include death, personal injury of passengers, loss or damage to passengers, vehicles, luggage and mobility equipment, including provisions of strict liability, for requests based on "shipping incidents"¹. The Protocol of 2002 also introduces, the obligation to have liability insurance for risks of war referring to the APPENDIX B of the Regulation. It is advisable to issue two separate certificates, depending on the liability, whether or not arising from the war risk coverage.

3. SCOPE OF THE REGULATION

3.1 The Regulation applies to any international² transport where:

¹ "Shipping incidents" means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship.

² Nr.9 of article 1º of the Athens Convention defines "international transport" as any transport where the place of departure and place of destination in accordance with the contract of carriage are situated in two different States or in a single State if, in accordance with the contract of carriage or the route envisaged, there is an intermediate port of call in another State.

- 3.1.1 The vessel is flying the flag or is registered in an EU or EEA Member State; or
- 3.1.2 The contract of carriage is concluded in an EU or EEA Member State; or
- 3.1.3 The place of departure or destination under the contract of carriage is in an EU or EEA Member State.

3.2 According to recital (12) of the Regulation, the words "or is registered in a Member State" should be considered to mean that the flag State for the purposes of bareboat charter-out registration, is either a Member State or a contracting party to the Athens Convention.

3.3 The Regulation also applies to carriage by sea on domestic voyages for both Class A and Class B ships pursuant to Article 4 of Directive 2009/45/EC. Article 11 of the Regulation allows Member States to postpone the application of the Regulation until 31 December 2016 for Class A ships and until 31 December 2018 for Class B ships.

The Portuguese Maritime Administration has taken the decision to exercise the option enshrined in Article 11 of the Regulation regarding the transportation by sea on domestic voyages, which is applied throughout the national territory as follows:

- 3.3.1 Class A ships until 31 December 2016; and
- 3.3.2 Class B ships until 31 December 2018.

3.4 In view of the scope of the Regulation, the Member States of the EU and the EEA may apply the provisions of the Regulation to all domestic voyages by sea.

The Portuguese Maritime Administration has decided not to apply, due to inadequacy at the present time, the extension of the scope of the Regulation on domestic voyages by sea, carried out within the national territory by Class C and D vessels pursuant to Article 4 of the Directive 2009/45/EC.

3.5 The definition of "passenger" set out in Article 1 of the 2002 Athens Convention encompasses any person carried in a ship under a contract of carriage or who with the consent of the carrier, is accompanying a vehicle or live animals covered by a contract of carriage of transport of goods not governed by the 2002 Athens Convention itself.

3.6 This definition is quite wide as it applies also to a cargo vessel when live animals are transported in containers; when the total number of animal handlers is, in a single voyage more than 12, they will be considered as passengers.

3.7 Also in the case of RO-RO cargo vessels carrying lorries and where the number of drivers present on a journey exceeds 12 drivers, in this case these drivers shall also be regarded as passengers.

3.8 In such cases, these vessels will also be covered by the provisions of the 2002 Athens Convention and by Regulation. These foreseeable situations fall within the scope of Article 4bis which regulates compulsory insurance.

4. ADDITIONAL PROVISIONS INTRODUCED BY REGULATION

4.1 Compensation for mobility equipment or other specific equipment.

Article 4 of the Regulation sets out that the carrier's liability under article 3(3) of the 2002 Athens Convention shall apply in the event of loss or damage to mobility equipment, or other specific equipment used by a passenger with reduced mobility. In such cases, the compensation shall correspond to the replacement value of the equipment concerned or, where appropriate, the costs relating to repairs.

4.2 Advance payment.

4.2.1 It should be borne in mind that Article 6 of the Regulation stipulates upon the carrier who actually performed in fact the whole or part of the carriage of a passenger, the payment of an advance in case of death or personal injury, caused by a shipping incident during transport. The advance shall be sufficient to cover immediate economic needs on a basis proportionate to the damage suffered within 15 days of the identification of the person entitled to damages, which, in the event of death, the payment shall not be less than € 21,000;

4.2.2 The advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of the Regulation.

4.3 Information to passengers.

4.3.1 According to the Regulations, the carrier and/or the performing carrier shall ensure that passengers are provided with adequate and comprehensible information about their rights;

4.3.2 Where a contract of carriage is concluded in a Member State of the EU or the EEA, that information shall be provided at all points of sale, including sales by telephone and via the internet. Where the place of departure is a Member State of the EU or the EEA, that information shall be provided prior to departure and in all other cases shall be provided at the latest on departure;

4.3.3 In order to comply with the obligation laid down in Article 7 of the Regulation, the carrier or the performing carrier shall provide passengers with at least the information contained in a summary of the provisions of the Regulation drawn up by the Commission and attached to this Circular as ANNEX I.

5. LIABILITY

5.1 Article 3 of the Regulation provides that the liability regime for passengers, their luggage and their vehicles is governed by the Regulation itself, the provisions of certain articles of the 2002 Athens Convention and the IMO Guidelines annexed to the Regulation, which are binding.

5.2 Article 3 of the 2002 Athens Convention further provides for the liability regime resulting from the loss or damage of luggage, whether it is cabin luggage or to luggage other than cabin luggage.

6. COMPULSORY INSURANCE - Article 4bis

6.1 When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and the 2002 Athens 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 the 2002 Athens 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 SDR³ per passenger on each distinct occasion.

7. LIMITATION OF LIABILITY

7.1 The limits of the carrier for the death or personal injury of passengers or for loss of or damage to luggage or vehicles are laid down respectively in Articles 7 and 8 of the 2002 Athens Convention.

7.2 The Portuguese legislation limits the liability of the carrier for the risk of war, which may result in the death or personal injury of passengers, to the following values:

7.2.1 250,000 SDR per passenger and in each specific case; or

7.2.2 340 Million SDRs, in total, per vessel and in each individual case.

7.3 The insurance mentioned in the previous point is covered by compensation for damages caused to passengers by:

7.3.1 War, civil war, revolution, rebellion, insurrection or civil strife arising there from, or any hostile act by or against a belligerent power;

7.3.2 Capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat;

7.3.3 Derelict mines, torpedoes, bombs or other derelict weapons of war;

7.3.4 Acts of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk;

7.3.5 Confiscation and expropriation.

7.4 War risk insurance may be subject to the exemptions, limitations and requirements in accordance with the provisions of Annex II to Regulation (EC) No 392/2009 of 23 April.

³ SDR “Special Drawing Rights” (Unit of Account) - is an international reserve asset created by the International Monetary Fund (IMF) in 1969 to supplement the official reserve of its member countries. At the time of publication the currency value of 1 SDR was about 0.860 €. The daily value of the SDR against the Euro can be obtained from the IMF website at http://www.imf.org/external/np/fin/data/rms_five.aspx.

8. INSURANCE CERTIFICATE

8.1 All passenger ships falling within the scope of the Regulation are required, in accordance with Article 4bis of that Regulation, to have a certificate proving that the ship has a valid insurance certificate or other financial security. The limit of compulsory insurance or other financial security shall not be less than 250,000 SDR per passenger in each individual case.

8.2 Passenger ship's insurance certificates flying the Portuguese flag are issued by the Directorate-General for Natural Resources, Safety and Maritime Services, DGRM, in Portuguese and English languages and shall remain on board the ship. DGRM may also issue a certificate to third-country vessels in the case such vessels are calling or sailing to a national port or an EU or EEA port.

8.3 Such certificates are issued in accordance with the date of commencement and validity stipulated in the blue card or financial guarantee provided by the insurer, or other financial provider and under no circumstances the certificates will be issued for periods longer than 12 months beginning at any time of the calendar year. The start and end date of the certificates of war coverage, and the others such as cover insurance for other non-war eventualities, required for an individual vessel, must coincide.

8.4 Existing certificates on board vessels registered in Third States, issued in accordance with the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea shall be recognized by Portugal.

9. ISSUANCE OF THE INSURANCE CERTIFICATE

Owners or companies of passenger ships falling within the scope of the Regulation or their legal representatives shall apply from DGRM, preferably by e-mail, the issuance of the certificate of insurance. The [Application](#) which may be downloaded from DGRM's official website, has to be completed and sent to dsam.requerimentos@dgrm.mm.gov.pt, together with evidence that an insurance or other financial guarantee has been signed, including the guarantee of a bank or similar institution, to cover liability for death and personal injury to passengers, loss of or damage to luggage, vehicles, and mobility equipment or other specific

equipment used by passengers with reduced mobility in precise terms of the legislation invoked. The scope and amount of the guarantee shall be equal to that set out in Article 4bis of the Regulation and the provisions of the IMO Guidelines on Implementation of the 2002 Athens Convention.

10. FEES

A fee shall be payable on the issue of the certificate referred to in paragraph 8. National support legislation and current [legal fees](#) can also be obtained from the DGRM official website.

The present Circular supersedes Circular N.º 11, of 19.12.2012

Done in Lisbon, 6 April 2017

The Director of the Maritime Administration Services

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NOTICE: up to the date of publication of this circular all contacts are considered correct

ANNEX I

Liability of ship owners in the event of accidents

SUMMARY

Passengers involved in maritime accidents must have an adequate level of compensation for any loss or damage they suffer. To ensure this, ship owners must have appropriate insurance arrangements in place.

ACT

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

WHAT DOES THE REGULATION DO?

It lays down harmonised rules on liability and insurance for shipping companies carrying passengers by sea. It introduces into European law the provisions of the [1974 Athens Convention](#) on the carriage of passengers and their luggage by sea and guidelines from the [International Maritime Organisation](#).

KEY POINTS

The legislation applies to all ships flying an EU country flag, travelling to or from a European port, or under a European contract of carriage (i.e. a contract between the carrier and its passengers defining rights, duties and liabilities).

The legislation currently applies to both international and domestic voyages, but it does not apply to domestic voyages in the course of which the ship is less than 5 miles from the coastline.

The operators' liability covers passengers and their luggage and vehicles, as well as mobility equipment for persons with reduced mobility.

For any injury or damage caused by a shipping incident (i.e. shipwreck, capsizing, collision or stranding, fire or explosion, or other defect of the ship), victims do not need to prove fault on the part of the carrier in order to be compensated.

Ship operators must make an advance payment to cover the immediate economic needs of a passenger who is killed or injured in a shipping incident. This payment does not imply the shipping company acknowledges liability.

The minimum advance payment for the death of a passenger is €21,000.

Shipping companies must provide passengers with understandable information on their rights.

This information must be available at all points of sale, including by phone and the internet, and provided before, or at the latest on, departure.

The European Commission, no later than 3 years after the legislation takes effect (31 December 2012), must produce a report on how it is being applied.

EU governments may postpone application of the legislation for ships involved in purely domestic voyages covered by the regulation. For vessels which travel less than 20 miles from the shore, the deadline is 31 December 2018 at the latest. For all others, the deadline is 31 December 2016.

SINCE WHEN DOES THE REGULATION APPLY?

From 29 May 2009.

For more information, see [Passenger rights on the European Commission's website.](#)