

# RIGHTS OF PASSENGERS IN MARITIME CARRIAGE – EUROPEAN LEGISLATION

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## **Abstract**

*The fact that ports in the EU-28 handle almost 400 million maritime passengers a year is the best evidence of the relevance of maritime carriage of passengers in EU. In order to enhance protection and rights of passengers while in transport by sea, EU adopted Regulation 392/2009 and Regulation 1177/2010. Regulation 392/2009 incorporates the relevant provisions of 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, but also contains some additional provisions to it aiming to obtain complete uniformity within EU as well as suitable protection for passengers. Regulation 1177/2010, on the other hand, establishes rules for sea and inland waterway transport whose main goal is to achieve non-discrimination between passengers with regard to transport conditions offered by carriers and non-discrimination and assistance for disabled persons and persons with reduced mobility. By passing these acts, EU has provided a comprehensive protection of passengers in carriage by sea.*

**Key words:** *passengers, maritime carriage, EU law*

## **1. Introduction**

In order to enhance safety of passengers in maritime transport, The European Union has adopted several legal acts. The most important among them, for the purpose of this article, are 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> and Regulation 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation

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<sup>1</sup> Hereafter: **Regulation 392/2009**. Text of Regulation 392/2009 in English: [www.europa.eu](http://www.europa.eu), *Official Journal of the European Union L131/24*

(EC) No 2006/2004.<sup>2</sup> Before the adoption of Regulation 392/2009 there was no Community legislation in European Union regulating liability for transport of passengers by sea. These issues were governed by two sets of law: the internal law of the Member States and the international law for those Member States that have ratified the Convention on Limitation of Liability for Maritime Claims, 1976<sup>3</sup> or 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, 1976.<sup>4</sup> This way protection of passengers varied between Member States, depending on what international conventions, and which amendments to them, have been ratified by the State in which the claim is settled.<sup>5</sup> Finally, as a result of the adoption of the Regulation 392/2009 it was created a single set of rules across the EU member states governing the liability of carriers to passengers travelling by sea in the event of an accident.

## 2. Carriage of passengers by sea in EU Law

On 23 April 2009. the European Union has adopted Regulation 392/2009 incorporating provisions of the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974<sup>6</sup> and of the Reservation and IMO Guidelines, 2006<sup>7</sup> and making them binding for all Member States.<sup>8</sup> In order to harmonize the date of application of the Regulation with the entry into force of the Protocol, on 12 December 2011 EU has acceded to the PAL Protocol 2002, although its accession does not count for the purpose of the entry into force in order to compel Member States to accede/ratify the Protocol so that it enters into force before the date of the application of the Regulation 392(2009).<sup>9</sup> Nevertheless, Regulation 392/2009 came into force on May, 29th

<sup>2</sup> Hereafter: **Regulation 1177/2010**. Text of Regulation 1177/2010 in English: [www.europa.eu](http://www.europa.eu) *Official Journal of the European Union L334/1*

<sup>3</sup> Hereafter: **LLMC Convention, 1976**. Text of LLMC Convention, 1976 in English: [www.imo.org](http://www.imo.org) Maximum amount of reparation per passenger under LLMC, 1976 is 46 666 SDR with a global limitation of 25 millions SDR.

<sup>4</sup> Hereafter: **LLMC Protocol 1996**. Text of LLMC Protocol, 1996 in English: [www.imo.org](http://www.imo.org) Maximum amount of reparation per passenger under the LLMC Prot, 1996 is 175,000 SDR. For more details about LLMC, 1976 and LLMC Prot, 1996 see **Patrick Griggs – Richard Williams – Jeremy Farr: *Limitation of Liability for Maritime Claims***, 4 Ed., London – Singapore, 2005, p. 7-94.

<sup>5</sup> **2005/0241(COD) Draft Report on the proposal for a regulation of the European Parliament and of the Council on the liability of carriers of passengers by sea and inland waterways in the event of accidents – first reading**, p.10.

<sup>6</sup> Hereafter: **PAL Protocol 2002**. Text of PAL Protocol 2002 in English: [www.imo.org](http://www.imo.org)

<sup>7</sup> Text of IMO Reservation and Guidelines, 2006 in English: [www.imo.org](http://www.imo.org)

<sup>8</sup> The date of application of the Regulation 392/2009 has been set as the date of the entry into force of the Protocol for the EU, but in any case no later than December, 31 2012., regardless of the entry into force of the Protocol by that time.

<sup>9</sup> **Marija Pospišil Miler-Marija Pospišil, *EU Accedes to the 2002 Protocol to the 1974. Athens Convention – Application for EU Member States from 31st December 2012.***, *Naše more*, 59(3-4), 2012., Dubrovnik, 2012, p.125.

2009<sup>10</sup> considerably earlier than PAL Protocol 2002 which came into force on April, 23rd 2014.

### ***2.1. 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***

Regulation 392/2009 represents a significant enhancement to the existing regime of liability for the death of, or personal injury to, a passenger and the loss of, or damage to luggage at sea. This Regulation lays down the Community regime relating to liability and insurance for the carriage of passengers by sea as set out in the relevant provisions of the PAL Convention, 1974,<sup>11</sup> as amended by the PAL Protocol, 2002 and the IMO Reservation and Guidelines, 2006.<sup>12</sup> Furthermore, this Regulation extends the application of those provisions to carriage of passengers by sea within a single Member State on board ships of Classes A and B under Article 4 of Directive 98/18/EC, and lays down certain supplementary requirements.<sup>13</sup>

Scope of regulation is defined in article 2 which says that regulation 392/2009 shall apply to any international carriage within the meaning of point 9 of Article 1 of the PAL Convention<sup>14</sup> and to carriage by sea within a single Member State on board ships of Classes A

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<sup>10</sup> Regulation 392/2009 came into force on May, 29th 2009 but is applied from December, 31st 2012.

<sup>11</sup> PAL, 1974 adopted by the Comité Maritime International (hereafter – CMI) and International Maritime Organization (hereafter – IMO) at Athens on December 13 and came into force on April 28, 1987, having received the approval of ten states as required by art. 24. – see text in **William Tetley: *International Maritime and Admiralty Law***, Montreal, 2003, p. 703-714.

<sup>12</sup> The Legal Committee of the International Maritime Organization on October, 19th 2006 at its 92nd session adopted the text of reservation, intended for use as a standard reservation, to the PAL Protocol 2002 and Guidelines for its implementation, to allow limitation of liability in respect of claims relating to war or terrorism. The aim is to put states in a position to ratify the PAL Protocol 2002 and afford passengers better cover. According to the text of reservation, the Government concerned reserves the right to and undertakes to limit liability to 250 000 units of account in respect of each passenger on each distinct occasion; or 340 million units of account overall per ship on each distinct occasion. This relates in particular to war insurance which, under Guidelines shall cover liability, if any, for loss suffered as a result of death or personal injury to a passenger caused by: war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power: capture, seizure, arrest restraint or detainment and the consequences thereof or any attempt thereat: derelict mines, torpedoes, bombs or other derelict weapons of war; act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk; confiscation and expropriation. See: **Dragan Bolanča – Petra Amižić Jelovčić, *Carriage of passengers in Croatia – National Legislation and EU Law***, Comparative Maritime Law, No.162., Zagreb, 2008., p.54.

<sup>13</sup> No later than 30 June 2013, the Commission shall, if appropriate, present a legislative proposal in order, *inter alia*, to extend the scope of this Regulation to ships of Classes C and D under Article 4 of Directive 98/18/EC.(Regulation 392/2009, article 1.).Commission did not exploit this opportunity.

<sup>14</sup> According to point 9, article 1 of PAL Convention ‘*international carriage*’ means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

and B under Article 4 of Directive 98/18/EC,<sup>15</sup> where the ship is flying the flag of or is registered in a Member State; the contract of carriage has been made in a Member State; or the place of departure or destination, according to the contract of carriage, is in a Member State. It is emphasized that Member States may apply this Regulation to all domestic sea-going voyages. This way, The EU Regulation extends the scope of the PAL Protocol 2002 to include certain domestic passenger services so that they can enjoy the same level of protection as international journeys.<sup>16</sup>

Article 3 of this Regulation stipulates that the liability regime<sup>17</sup> in respect of passengers, their luggage and their vehicles and the rules on insurance or other financial security shall be governed by this Regulation, by Articles 1 and 1bis, Article 2(2), Articles 3 to 16 and Articles 18, 20 and 21 of the Athens Convention set out in Annex I and by the provisions of the IMO Guidelines set out in Annex II.<sup>18</sup> Therefore, for the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident,<sup>19</sup> the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250 000 units of account.<sup>20</sup> If and to the extent that the loss exceeds

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<sup>15</sup> Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships. Text in English: *Official Journal of the European Union L144*. Hereafter: **Directive 98/18**. According to the article 4 of Directive 98/18 passenger ships are divided into classes according to the sea area in which they operate. **Class A** means a passenger ship engaged on domestic voyages other than voyages covered by Classes B, C and D. **Class B** means a passenger ship engaged on domestic voyages in the course of which it is at no time more than 20 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height. **Class C** means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 2,5 m significant wave height is smaller than 10 % over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 15 miles from a place of refuge, nor more than 5 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height. **Class D** means a passenger ship engaged on domestic voyages in sea areas where the probability of exceeding 1,5 m significant wave height is smaller than 10 % over a one-year period for all-year-round operation, or over a specific restricted period of the year for operation exclusively in such period (e.g. summer period operation), in the course of which it is at no time more than 6 miles from a place of refuge, nor more than 3 miles from the line of coast, where shipwrecked persons can land, corresponding to the medium tide height.

<sup>16</sup> Furthermore, the EU Regulation requires carriers engaged in the carriage of passengers on both domestic and international journeys, to provide passengers with appropriate and comprehensive information regarding their rights.

<sup>17</sup> Paragraph 1, article 5 of Regulation 392/2009 says that this Regulation shall not modify the rights or duties of the carrier or performing carrier under national legislation implementing the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, including any future amendment thereto.

<sup>18</sup> The IMO Guidelines as set out in Annex II shall be binding.

<sup>19</sup> 'Shipping incident' means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship. (point 5, article 3 PAL Convention)

<sup>20</sup> The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund (article 9. of PAL Convention). Exoneration is prescribed when 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.

the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.<sup>21</sup> The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400 000 units of account per passenger on each distinct occasion (article 7 PAL Convention). For the loss<sup>22</sup> suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier.<sup>23</sup>

For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.<sup>24</sup> For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.<sup>25</sup>

In the event of loss of, or damage to, mobility equipment<sup>26</sup> or other specific equipment used by a passenger with reduced mobility, the liability of the carrier shall be governed by Article 3(3) of the PAL Convention, as if it was loss of or damage to cabin luggage of the passenger. The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs (article 4 Regulation 392/2009). It may be concluded that mobility equipment is excluded from limitations related to luggage.

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<sup>21</sup> 'Fault or neglect of the carrier' includes the fault or neglect of the servants of the carrier, acting within the scope of their employment (point 5, article 3 PAL Convention).

<sup>22</sup> 'Loss' shall not include punitive or exemplary damages (point 5, article 3 PAL Convention).

<sup>23</sup> The burden of proving fault or neglect shall lie with the claimant.

<sup>24</sup> The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2 250 units of account per passenger, per carriage (paragraph 1., article 8. PAL Convention).

<sup>25</sup> Article 15 of PAL Convention prescribes notice of loss or damage to luggage. According to this article the passenger shall give written notice to the carrier or his agent:

a) in the case of apparent damage to luggage:

1-for cabin luggage, before or at the time of disembarkation of the passenger;

2-for all other luggage, before or at the time of its re-delivery;

b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged. liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant. Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

<sup>26</sup> For the purposes of this Regulation, the expression 'mobility equipment' should be considered to mean neither luggage nor vehicles within the meaning of Article 8 of the PAL Convention.

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping.<sup>27</sup>

The carrier shall not be entitled to the benefit of the limits of liability prescribed 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 (paragraph 1, article 13. PAL Convention).<sup>28</sup>

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the Court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court (article 6. PAL Convention). Article 16th of PAL Convention stipulates that any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years. As regard to jurisdiction and enforcement, Article 17 and 17bis of the 2002 Protocol are not incorporated<sup>29</sup> into the Regulation 392/2009 because jurisdiction and enforcement are already covered by Council Regulation 44/2001 in civil and commercial matters.<sup>30</sup>

PAL Convention in article 4bis introduces compulsory insurance of the carrier.<sup>31</sup> Consequently, when passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other

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<sup>27</sup> The liability of the carrier shall in no case exceed 3 375 units of account per passenger, per carriage (paragraph 3, article 8. PAL Convention). The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed (paragraph 1, article 10 PAL Convention).

<sup>28</sup> The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

<sup>29</sup> Besides the articles 17 and 17 bis, article 2(1) of PAL Protocol 2002, which refers to scope, was not incorporated in the text of Regulation 392/2009, because PAL Convention applies only to the international carriage by sea. The distinction between national and international transport has been eliminated within the internal market in maritime transport services and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the Community.

<sup>30</sup> The matters covered by Articles 17 and 17bis of the Athens Convention fall within the exclusive competence of the Community in so far as those Articles 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 (recital 11 of Regulation 392/2009).

<sup>31</sup> More about compulsory insurance with a right of direct action against insurers: **Marija Pospišil Miler**, *Atenska konvencija o prijevozu putnika i njihove prtljage morem, 2002.*, Poredbeno pomorsko pravo, No.158., Zagreb, 2004., pp. 239-24

financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers.<sup>32</sup> The limit of the compulsory insurance or other financial security shall not be less than 250 000 units of account per passenger on each distinct occasion.<sup>33</sup>

Distinct from solutions from PAL Protocol 2002, Regulation 392/2009 gives an option of advance payment. This legal institute, rather new for maritime carriage, was taken from air law.<sup>34</sup> 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 of the identification of the person entitled to damages. In the event of the death, the payment shall not be less than EUR 21 000.<sup>35</sup> An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of this Regulation.<sup>36</sup>

Regulation 392/2009 obligates the carrier and/or performing carrier on providing passengers with appropriate and comprehensible information regarding their rights. Where the contract of carriage is made in a Member State, that information shall be provided at all points of sale, including sale by telephone and via the Internet. Where the place of departure

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<sup>32</sup> A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with.

<sup>33</sup> A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate. Member state shall issue certificate after being convinced on the basis of a Blue Card that carrier who actually performs the whole or a part of the carriage has insurance or other financial security, to cover liability under this Convention in respect of the death of and personal injury to passengers.

<sup>34</sup> EU harmonized its legislation with provisions of Convention for the Unification of Certain Rules for International Carriage by Air (hereafter: **Montreal Convention 1999**) by passing the Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents (hereafter: **Regulation 889/2002**). Regulation 889/2002 determinates in its annex that if a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. In the event of death, this advance payment shall not be less than 16000 SDRs (approximate amount in local currency). More: **Nikoleta Radionov et al.**, *Europsko prometno pravo*, Zagreb, 2011., p.430

<sup>35</sup> This provision shall also apply where the carrier is established within the Community (article 6 Regulation 392/2009).

<sup>36</sup> It shall not be refundable, except in the cases set out in Article 3(1), which refers to exoneration of carrier's liability, or Article 6 of the Athens Convention, which refers to contributory fault, or Appendix A to the IMO Guidelines, or where the person who received it is not the person entitled to damages.

is in a Member State, that information shall be provided prior to departure. In all other cases, it shall be provided at the latest on departure. To the extent that the information required under this Article has been provided by either the carrier or the performing carrier, the other shall not be obliged to provide it. The information shall be provided in the most appropriate format (article 7 Regulation 392/2009).

Right to information is only one of several important passenger's rights elaborated in detail within Regulation 1177/2010.<sup>37</sup>

## ***2.2. Regulation 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004.***

Before the adoption of Regulation 1177/2010, all rights of passengers in carriage by sea were regulated exclusively by the Regulation 392/2009. However, it should be emphasized that yet in the early 90's of the last century, under the influence of the trend of the consumer rights protection, EU launched a number of initiatives for the protection of passenger rights in all modes of transport. First steps in expanding the protection of passengers' rights were undertaken in the area of air transport of passengers, which was the most developed segment of the market of transportation of passengers and where was recorded a high growth. Following the example of legislation in air transport, a set of new rules were adopted that would apply *mutatis mutandis* in other branches of transport.<sup>38</sup>

Regulation 1177/2010 establishes rules for sea and inland waterway transport whose main goal is to achieve non-discrimination between passengers with regard to transport conditions offered by carriers and non-discrimination and assistance for disabled persons and persons with reduced mobility. It also takes into account the need of securing the rights of passengers in cases of cancellation or delay; minimum information to be provided to passengers;<sup>39</sup> the handling of complaints as well as general rules on enforcement (article 1 Regulation 1177/2010). The Regulation specifies the minimum standards of protection of passengers, but each carrier can offer passengers even better contractual conditions from those envisaged by Regulation 1177/2010. The provisions of this Regulation are

<sup>37</sup> Regulation 1177/2010 came into force on January, 6th 2011 but became applicable on December, 18th 2012.

<sup>38</sup> See more: **Božena Bulum**, *Prava putnika u pomorskom prijevozu prema uredbi Europske unije broj 1177/2010*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 62, No.4., 2012., p. 1078.

<sup>39</sup> Absence of information regarding the events that lead to the carrier's liability towards the passengers, is the root cause of passengers unfamiliarity with the rights granted to them. This may also be a main reason which of such small number of complaints against the carriers on account of quality of transportation services by sea.



mandatory, so the rights and obligations that are recognized can not be revoked or limited by the contract of carriage.<sup>40</sup> Where the performance of the obligations under this Regulation has been entrusted to a performing carrier, ticket vendor or any other person, the carrier, travel agent, tour operator or terminal operator who has entrusted such obligations shall nevertheless be liable for the acts and omissions of that performing party, acting within that party's scope of employment.<sup>41</sup>

All passengers travelling by sea or inland waterways have several fundamental rights. For instance, in the case of a cancellation or a delay in departure of a passenger service or a cruise, passengers departing from port terminals or, if possible, passengers departing from ports shall be informed by the carrier or, where appropriate, by the terminal operator, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled time of departure, and of the estimated departure time and estimated arrival time as soon as that information is available. Furthermore, where a carrier reasonably expects the departure of a passenger service or a cruise to be cancelled or delayed for more than 90 minutes beyond its scheduled time of departure, passengers departing from port terminals shall be offered free of charge snacks, meals or refreshments in reasonable relation to the waiting time, provided they are available or can reasonably be supplied. In the case of a cancellation or a delay in departure where a stay of one or more nights or a stay additional to that intended by the passenger becomes necessary, where and when physically possible, the carrier shall offer passengers free of charge, adequate accommodation on board, or ashore.<sup>42</sup> Where a carrier reasonably expects a passenger service to be cancelled or delayed in departure from a port terminal for more than 90 minutes, the passenger shall immediately be offered the choice between re-routing to the final destination, under comparable conditions, as set out in the transport contract, at the earliest opportunity and at no additional cost; or reimbursement of the ticket price and, where relevant, a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity. Furthermore, Regulation 1177/2010 does not make distinction between cases of the canceled departure and delayed departure. Moreover, obligation of the carrier or terminal operator to

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<sup>40</sup> *Ibidem*, p. 1083.

<sup>41</sup> In addition to paragraph 1, the party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal operator shall be subject to the provisions of this Regulation, including provisions on liabilities and defences, with regard to the obligation entrusted (article 5 Regulation 1177/2010).

<sup>42</sup> For each passenger, the carrier may limit the total cost of accommodation ashore, not including transport to and from the port terminal and place of accommodation, to EUR 80 per night, for a maximum of three nights. (article 17 Regulation 1177/2010)

compensate passenger's damage caused by any of these forms of interrupted travel is not envisaged..

On the other hand, Regulation 1177/2010 stipulates compensation of the ticket price in the event of delay in arrival. Without losing the right to transport, passengers may request compensation from the carrier if they are facing a delay in arrival at the final destination as set out in the transport contract.<sup>43</sup>

One whole chapter in Regulation 1177/2010 is dedicated to rights of disabled persons and persons with reduced mobility. Besides the general passenger rights, disabled persons and persons with reduced mobility have the following rights when travelling by waterborne transport so as to provide them with a right to transport on an equal footing with other passengers.

Disabled persons and persons with reduced mobility have right to access to transport without any discrimination. Carriers, travel agents and tour operators shall not refuse to accept a reservation, to issue or otherwise provide a ticket or to embark persons on the grounds of disability or of reduced mobility as such.<sup>44</sup> Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost under the same conditions that apply to all other passengers (article 7 Regulation 1177/2010).

Disabled persons and persons with reduced mobility have the right to free of charge assistance by carriers and terminal operators in ports and on board ships, including with embarkation and disembarkation. The assistance shall, if possible, be adapted to the individual needs of the disabled person or person with reduced mobility (article 10 Regulation 1177/2010).<sup>45</sup>

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<sup>43</sup> The minimum level of compensation shall be 25 % of the ticket price for a delay of at least:

- a) 1 hour in the case of a scheduled journey of up to 4 hours;
- b) 2 hours in the case of a scheduled journey of more than 4 hours, but not exceeding 8 hours;
- c) 3 hours in the case of a scheduled journey of more than 8 hours, but not exceeding 24 hours; or
- d) 6 hours in the case of a scheduled journey of more than 24 hours.

If the delay exceeds double the time set out in points (a) to (d), the compensation shall be 50 % of the ticket price (article 19. Regulation 1177/2010).

<sup>44</sup> Carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to or to embark a disabled person or person with reduced mobility in order to meet applicable safety requirements established by international, Union or national law or in order to meet safety requirements established by the competent authorities or where the design of the passenger ship or port infrastructure and equipment, including port terminals, makes it impossible to carry out the embarkation, disembarkation or carriage of the said person in a safe or operationally feasible manner. In case of these events, carriers, travel agents and tour operators shall make all reasonable efforts to propose to the person concerned an acceptable alternative transport on a passenger service or a cruise operated by the carrier (article 8 Regulation 1177/2010).

<sup>45</sup> Disabled persons and persons with reduced mobility have to notify the carrier at the time of reservation or advance purchase of the ticket of their specific needs regarding accommodation, seating, required services or

Carriers and terminal operators shall be liable for loss suffered as a result of the loss of or damage to mobility equipment or other specific equipment, used by a disabled person or person with reduced mobility, if the incident which caused the loss was due to the fault or<sup>46</sup> neglect of the carrier or the terminal operator. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident. The compensation shall correspond to the replacement value of the equipment concerned or, where applicable, to the costs relating to repairs (article 15 Regulation 1177/2010).<sup>47</sup>

Carriers and terminal operators shall set up or have in place an accessible complaint-handling mechanism for rights and obligations covered by this Regulation.<sup>48</sup> Each Member State shall designate a new or existing body or bodies responsible for the enforcement of this Regulation as regards passenger services and cruises from ports situated on its territory and passenger services from a third country to such ports. Each body shall take the measures necessary to ensure compliance with this Regulation.<sup>49</sup> The Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.<sup>50</sup> The Commission shall report to the European Parliament and to the Council by 19 December 2015 on the operation and the effects of this Regulation. The report shall be accompanied where necessary by legislative proposals implementing in further detail the provisions of this Regulation, or amending it (article 29 Regulation 1177/2010).

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their need to bring medical equipment. For any other assistance the disabled persons and persons with reduced mobility need to notify the carrier or terminal operator at least 48 hours in advance and have to present themselves at an agreed time ahead of the published embarkation time at a designated point.

<sup>46</sup> This article shall not apply if Article 4 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 (10) applies.

<sup>47</sup> Paragraphs 1 and 2 shall not apply if Article 4 of Regulation (EC) No 392/2009 applies (paragraph 3, article 15 Regulation 1177/2010).

<sup>48</sup> Where a passenger covered by this Regulation wants to make a complaint to the carrier or terminal operator, he shall submit it within 2 months from the date on which the service was performed or when a service should have been performed. Within 1 month of receiving the complaint, the carrier or terminal operator shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than 2 months from the receipt of a complaint (article 24 Regulation 1177/2010).

<sup>49</sup> Any passenger may submit a complaint, in accordance with national law, to the competent body designated under paragraph 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation. The competent body shall provide passengers with a substantiated reply to their complaint within a reasonable period of time (paragraph 3, article 25 Regulation 1177/2010).

<sup>50</sup> Member States shall notify those rules and measures to the Commission by 18 December 2012 and shall notify it without delay of any subsequent amendment affecting them.

### 3. Carriage of passengers by sea in Croatia

Republic of Croatia became a member of European Union on July 1st 2013. As a member country Croatia has completely integrated EU legislation into its national law. The carriage of passengers and luggage by sea in Croatia is regulated by articles 598-633 of Croatian Maritime Code. The new Croatian Maritime Code<sup>51</sup> was passed on December 8, 2004, and came into force on December 29, 2004.<sup>52</sup> Last amendments to the CMC from 2013 harmonized Croatian legislation concerning maritime carriage of passengers with EU Regulation 392/2009 while solutions from Regulation 1177/2010 were incorporated in Croatian legislation 2013 through the newest amendments to Act on transport in liner shipping and occasional coastal maritime traffic.<sup>53</sup>

On the transport of passengers and their luggage in international and domestic navigation on ships of class A and B apply Regulation 392/2009, in distinction from the carriage of passengers and their luggage in domestic navigation, on ships that do not belong to the class A and B, in which case provisions of this Code will be in force (article 612 CMC). Compared to Regulation 392/2009, carrier's liability in national navigation on ships that are not class A or B, according to CMC, is less severe and is based on proved or presumed fault depending on the fact whether the death of or personal injury to a passenger was caused during the navigation or as a result of shipwreck, collision, stranding, explosion, fire or defect of the ship (article 613-615 of CMC). The liability of the carrier for the death of or personal injury to a passenger is limited in all cases to 175,000 SDR's per passenger and per carriage (article 620 of CMC).<sup>54</sup>

<sup>51</sup> The CMC extensive text is divided into twelve parts and has 1.032 articles. Hereafter – **CMC**.

<sup>52</sup> See „Narodne novine“, No. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013. The CMC derogated old Maritime Code which was in force from March 22, 1994. See „Narodne novine“, No. 17/94, 74/94 and 43/96. For more details about derogated act see **Dragan Bolanča – Axel Luttenberger: Some Views on the New Croatian Maritime Code**, «Zbornik radova Pravnog fakulteta u Splitu», No. 1-2, 1995, pp. 113 – 117, **Dragan Bolanča: The New Croatian Maritime Code**, «Acta Juridica Hungarica», Budapest, No. 1-2, 1997, pp. 60-63, **Ivo Grabovac: Plovidbeno pravo Republike Hrvatske**, Split, 2003, pp. 11 – 424. About new CMC see: **Ivo Grabovac: Suvremeno hrvatsko pomorsko pravo**, Split, 2005, pp. 7 – 243, **Drago Pavić: Pomorsko imovinsko pravo**, Split, 2006, pp. 29 – 534, **Axel Luttenberger: Pomorsko upravno pravo**, Rijeka, 2005, pp. 13 – 195, **Ivo Grabovac – Ranka Petrinović: Pomorsko pravo (pomorsko javno, upravno i radno pravo)**, Split, 2006, pp. 1 – 109, **Dorothea Čorić: Novi Pomorski zakonik**, Collected Papers «Pomorski zakonik Republike Hrvatske i druge novine iz područja pomorskog i prometnog prava», Rijeka, 2005, pp. 9 – 28.

<sup>53</sup> Act on transport in liner shipping and occasional coastal maritime traffic. See „Narodne novine“, No. 33/06, 38/09, 87/09, 18/11, 80/13. More on liner shipping: **Nikola Mandić-Ivana Lovrić, Koncesije za obavljanje javnog prijevoza u linijskom obalnom pomorskom prometu**, Naše more, god.58, br. 3-4, Dubrovnik, 2011., pp.112.-123., **Nikola Mandić – Ana Karamarko, Pregled Zakona o prijevozu u linijskom i povremenom obalnom pomorskom prometu**, Zbornik radova 3. međunarodne konferencije o pomorskoj znanosti – IMSC, 2011., Split, 2011., pp.189.-204.

<sup>54</sup> If the total amount payable to all claimants under this article exceeds the global limitation of liability available to the carrier under articles 385.-400 of CMC, the carrier may also invoke the latter limitation. See: **Jasenko**

In article 606 of CMC is explicitly said that provisions of the Regulation 1177/2010 will apply on passenger rights, except in respect of passengers traveling :

- a) on vessels authorized to transport up to 12 people;
- b) on vessels whose crew does not count more than three members, or where the length of the overall passenger service is less than 500 meters in one direction;
- c) on excursion and sightseeing tours different from the cruise;
- d) to vessels which are not mechanically operated, as well as the original and individual replicas of historical passenger vessels designed before 1965, made largely of original material and authorized to transport up to 36 passengers.

#### 4. Conclusion

Despite the opposition of maritime carriers, PAL Protocol 2002 altered radically previous convention with protocols. It established a new liability regime by introducing two tier liability system<sup>55</sup> and adopting strict liability for death and personal injury claims caused by shipping incidents. PAL Protocol 2002 requires compulsory insurance in respect of such liability and allows direct action against insurers. Although, this international document gives passengers satisfactory rights, EU took one step more towards their ultimate goal, which is complete and adequate protection of passengers, when adopted Regulation 392/2009 and Regulation 1177/2010. Regulation 392/2009 incorporates the relevant provisions of PAL Prot, 2002 and extends the application of those provisions to carriage by sea within a single Member State. Besides that, it also contains some additional provision to PAL Protocol 2002, such as advance payment and special regulation of mobility equipment, all in order to achieve complete uniformity within EU as well as suitable protection for passengers. In addition to it, Regulation 1177/2010 establishes rules for sea and inland waterway transport whose main goal is to achieve non-discrimination between passengers with regard to transport conditions offered by carriers and non-discrimination and assistance for disabled persons and persons with reduced mobility. Even though they impose stricter liability of maritime carriers and imply a greater financial burden to them and to insurers in the event of accident, EU has

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**Marin**, *Ugovori o prijevozu putnika i prtljage morem*, Zagreb, 2005., pp.18-19 CMC adopts solutions from LLMC, 1976 and LLMC Prot, 1996. According to these acts, in respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the carrier is limited to 175,000 SDR's multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate. **Bolanča, D. - Amižić Jelovčić, P., o.c.**, p. 55

<sup>55</sup> Two tier liability system was implemented following the example of the Montreal Convention, 1999.

adopted these regulations and created comprehensive protection of passengers in carriage by sea.

The carriage of passengers and luggage by sea in Croatia is regulated by Croatian Maritime Code. Last amendments to the CMC from 2013 harmonized Croatian legislation concerning maritime carriage of passengers with Regulation 392/2009 while solutions from Regulation 1177/2010 were incorporated in Croatian legislation 2013 through the newest amendments to the Act on transport in liner shipping and occasional coastal maritime traffic.

Turkey, as a candidate country, also has an obligation of incorporating EU current rules into its national law. Harmonization of laws is one of most important requirements for EU membership. Large improvement in quality of maritime legislation<sup>56</sup> in Turkey was accomplished by the adoption of new Turkish Commercial Law.<sup>57</sup> The New Law was promulgated in the Official Gazette on 14 February 2011.<sup>58</sup> As stated in the New Turkish Commercial Code No. 6102 and Law No. 6103 on Validity and Application of the Turkish Commercial Code, the New Law became effective on 1 July 2012.<sup>59</sup> Although Turkey did not ratify PAL Protocol 2002, it implemented all its important solutions as part of new Code. A great variety of amendments have been introduced by the New TCC, given that there has been a significant increase in the number of the sea carriage of passengers and their luggage in Turkey, solutions from the PAL Protocol 2002 have formed the basis for new regulation of this relevant field of interest. Nevertheless, it would be advisable for Turkey to implement provisions from Regulation 392/2009, as well as Regulation 1177/2010 regarding the rights of passengers in maritime carriage. This way, not only that Turkey would synchronize completely its maritime law with the European, but it would also provide all the passengers the best possible legal protection.

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<sup>56</sup> Turkish maritime law is heavily influenced by German law and the continental legal system upon which German law is founded. Yet, Turkish maritime commerce is routinely conducted according to Anglo-Saxon business principles. Although this difference has, on the one hand, created a dichotomy between maritime law and the business practices to which it applies, it has, on the other hand, enabled Turkish maritime lawyers to understand and appreciate different maritime regimes. **Hakan Karan**, *Turkish Maritime Law Update*, Journal of Maritime Law & Commerce, July, 2002, pp. 371. – 380.

<sup>57</sup> The Turkish Commercial Code includes the Maritime Law. The fourth book of the Turkish Commercial Code (TCC) is dedicated to maritime law, and includes the following topics: To fly and use the Turkish flag, Property and real rights on vessels, Owners' liabilities, Carrier's liabilities due to loss or damage to the load, Charter parties, Owners' rights, Sea accidents, Vessel liens, Lien on cargo, Legal practice, Arbitration clauses and Jurisdiction clauses.

<sup>58</sup> Previous Turkish Commercial Code, numbered 6762, had been in effect since January 1st, 1957.

<sup>59</sup> See more: **New Turkish Commercial Code – a blueprint for the future**, [www.pwc.com.tr](http://www.pwc.com.tr), pp.6.

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