

EVALUATION ROADMAP			
TITLE OF THE EVALUATION	Ex-post Evaluation of Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea		
LEAD DG RESPONSIBLE UNIT	MOVE D2	DATE OF THIS ROADMAP	07 / 2015
TYPE OF EVALUATION	Evaluation	PLANNED START DATE	12 / 2015
	Ex-post	PLANNED COMPLETION DATE	12 / 2016
	Mixed	PLANNING CALENDAR	http://ec.europa.eu/smart-regulation/evaluation/index_en.htm
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A. Purpose

(A.1) Purpose
To assess the application and the impacts of the Regulation, looking, in particular, into its impact on passenger rights at sea in case of accidents, maritime safety standards for passenger vessels and a level playing-field for the relevant economic operators concerned (i.e. carriers). The evaluation will consider these in the light of the different types of journeys covered by passenger ships, namely the differences between international, and long-distance and short-distance domestic journeys (e.g. numbers of passengers concerned, economic capacity of relevant operators).
(A.2) Justification
The Regulation contains the obligation to examine the application of the Regulation in order to propose, if appropriate, the amendment of its scope or other elements thereof, subject to a suitable impact assessment. ¹ Conducting an evaluation of the application of the Regulation will enable the Commission to have a clear picture on market performance and based on its outcome may propose adjustments necessary for obtaining a more effective functioning of the liability system in due time. Finally, the Regulation requires the Commission to submit a report examining its application to the EP and the Council. The Commission has decided to extend this exercise and to perform a full evaluation of the Regulation

B. Content and subject of the evaluation

(B.1) Subject area
The Regulation addresses liability of carriers of passengers by sea in the event of accidents. It has been adopted as part of the third maritime safety legislative package. Liability rules for damages caused to passengers are important to safeguard passengers' rights, but also to create a level playing field for carriers across Europe fostering responsible shipping practices and, indirectly, raising safety standards. The Regulation lays down rules for the establishment and organisation of a strict liability regime for carriers of passengers by sea, coupled with a mandatory insurance obligation for the carrier, and a right

¹ See Articles 1(3), 8 and 9(1) of Regulation (EC) No 392/2009.

of direct recourse for the passenger against the carrier's insurer. This regime is in fact established in the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea², and is reproduced in Annex I of the Regulation.

In addition, in order to ensure the ability of the relevant market sector to obtain the necessary insurance cover in line with the Regulation and the Convention, the strict liability of the carrier is limited to a maximum amount of 250,000 SDR for each passenger per incident (approx. 318,000 EUR) or 340 million SDR in total per incident (approx. 432 million EUR). This cap applies also to war and terrorism risks, which are presently covered by a separate insurance policy to other (non-war) risks.³

The scope of the Regulation is broader than the above-mentioned international regime, as it extends the application of these requirements to domestic carriage. In particular, following a 'step-by-step' approach to its applicability to the different classes of domestic passenger ships as defined in EU law⁴, the Regulation currently applies to classes A and B of domestic carriage (i.e. classes A, B, C, D are defined based on the distance from the closest place of refuge and the average wave height, starting from the longest distance and higher wave height). However, there is a possibility for each Member State to decide to extend its application to all domestic seagoing voyages⁵. There are also, exemptions that cover classes A and B of domestic carriage, until 31/12/2016 and 31/12/2018 respectively, which some Member States have made use of, in line with the gradual approach to the applicability of the Regulation to the different types of carriage. The scope of the Regulation is explicitly envisaged to extend to classes C and D (i.e. shorter distance and wave height) of domestic carriage, if appropriate, and subject to a suitable impact assessment⁶. It is important to note that this Regulation, due to the reliance of its material scope on the classification of domestic seagoing voyages in the relevant passenger ship safety legislation, is inextricably linked to the ongoing review (REFIT) of this part of the EU acquis and is likely to be affected by the outcome of this exercise.

Finally, the Regulation adds specific rights for passengers that are not covered by the international regime, namely, a right to an advance payment of at least 21,000 EUR in case of death or personal injury, a specific right for persons with reduced mobility (PRMs) to receive compensation in the event of loss or damage to mobility or other specific equipment, and a right to obtain sufficient information on the relevant rights allocated to passengers under the Regulation before and during the journey.

(B.2) Original objectives of the intervention

The Regulation was adopted as part of a legislative package aiming to improve maritime safety. The Regulation specifically aims at ensuring that passenger rights are respected in the event of accidents at sea in the course of carriage, including in particular an adequate level of compensation, irrespective of the area of operation of the vessel (i.e. domestic or international voyage). The Regulation also aims at establishing a level playing field for the operators taking into account insurability of risks and the differences among the different types of carriage. Moreover, the Regulation establishes an additional incentive for better safety performance of operators in EU waters, as carriers will have to demonstrate that their ships are safe in order to obtain the mandatory insurance coverage. Finally, the Regulation seeks to create a balanced framework of protection for passengers across transport modes, with respect – in particular – to the right to information, the rights to special compensation for persons with reduced mobility and the right to an advance payment.⁷

² Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974, as amended by the Protocol of 2002, adopted under the auspices of the International Maritime Organisation.

³ These requirements are foreseen in the 'IMO Reservation and Guidelines on the Implementation of the Athens Convention' adopted by the Legal Committee of the IMO on 19 October 2006, reproduced as Annex II of Regulation (EC) No 392/2009, which are made mandatory in the EU as per Article 3(2) of the Regulation.

⁴ Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships repealed by Directive 2009/45/EC, OJ L 163, 25.6.2009, p. 1.

⁵ Article 2 of the Regulation.

⁶ Article 1(3) of the Regulation.

⁷ The recitals of the Regulation largely describe its objectives; and, for the purposes of this Roadmap, the Impact Assessment study carried out for this proposal in 2005 was also examined, see SEC(2005)1516.

(B.3) How the objectives were to be achieved
<p>In order to attain the objectives outline in section B.2, the Regulation contains three types of measures:</p> <p>(a) measures establishing specific rights for passengers in case of an accident in the course of carriage by sea;</p> <p>(b) measures establishing a wider scope of application for these rights, going beyond the standards of the relevant international convention, covering both international and domestic carriage;</p> <p>(c) measures taking into account the financial capabilities of carriers and protecting the insurability of the relevant obligations established under (a) and (b) above.</p> <p>Please see Annex I for a schematic overview of the intervention logic for this Regulation.</p>

C. Scope of the evaluation/FC
(C.1) Topics covered
<p>The evaluation will examine the application and impacts of the Regulation as a whole from 31/12/2012, when it entered in force, until 01/06/2015. For the assessment of the effectiveness and efficiency of provisions for classes A and B, the evaluation will cover all Member States to which this is applicable, while for the assessment of provisions for classes C and D, it will look mostly into the application of the Regulation in Denmark and the Netherlands, which decided to implement the rules on all types of domestic carriage, in accordance with Article 2 (last sentence). It will also take into account both EU and international traffic affected, with an emphasis on the former.</p>
(C.2) Issues to be examined
<p><u>Relevance:</u></p> <p>(1) To what extent are the objectives of this initiative still relevant today?</p> <p>(2) To what extent is the current scope of application of the Regulation (i.e. international and classes A and B of domestic carriage) adequate for the attainment of the objectives and catering to the needs of the sector?</p> <p><u>Effectiveness:</u></p> <p>(3) To what extent have the objectives of the Regulation been achieved?</p> <p>(4) To what extent have the measures adopted in the Regulation ensured the same level of passenger rights protection regardless of the area of operation of the ship?</p> <p>(5) Has the Regulation lead to any positive or negative unexpected effects?</p> <p><u>Efficiency:</u></p> <p>(6) Do the costs of the measures adopted in the Regulation to achieve the aforementioned objectives remain reasonable and proportionate in relation to the benefits of the Regulation?</p> <p><u>Coherence:</u></p> <p>(7) To what extent does the Regulation fit in well within the framework of the EU maritime safety policy and passenger rights policy and, more specifically, within the Union's approach to transport operators' liability? Whether there are any overlaps, gaps or inconsistencies?</p> <p>(8) Is the approach of the Regulation to the coverage of domestic seagoing carriage coherent with the forthcoming review of the passenger ship safety legislation?</p>

(9) Are the objectives of the Regulation (still) coherent with the EU Transport policy, notably the White Paper on Transport (not published when it was adopted), and ten policy areas that are set as priorities by the current European Commission (as announced in July 2014⁸)?

EU Added Value:

(10) What added value compared to the international and national regimes for liability of carriers of passengers at sea has the Regulation brought?

(C.3) Other tasks

D. Evidence base

(D.1) Evidence from monitoring

Compliance with the Regulation is verified through the following three methods:

- (a) flag State control of the carriers flying their flag so that they fulfil the requirements of the Regulation (COM can contact MS to inquire as to the results of these controls over the past three years);
- (b) Port State control of the carriers entering EU ports and recording of the lack of certificates in accordance with the Regulation in a special module created in THETIS (the information system that supports the new Port State Control inspection regime) for this specific purpose (input from EMSA readily available);
- (c) citizen/passenger complaints (none so far).

(D.2) Previous evaluations and other reports

IA study (SEC(2005) 1516) annexed to the COM proposal for a Regulation on the liability of carriers of passengers by sea and by internal waterways in case of accidents (COM(2005) 592final).

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1437409533014&uri=CELEX:52005SC151>

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005PC0592&qid=1437409533014>

This is to be used as background of the policy initiative that illustrates the balancing carried out by the Commission in its proposal for a Regulation.

European Parliament 'Ex-Post Impact Assessment on the implementation and effects of the Third Maritime Safety Package' of January 2015

In Depth Analysis:

[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536341/EPRS_IDA\(2015\)536341_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536341/EPRS_IDA(2015)536341_REV1_EN.pdf)

Study by Milieu Ltd:

[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536341/EPRS_IDA\(2015\)536341\(ANN\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/536341/EPRS_IDA(2015)536341(ANN)_EN.pdf)

Some Member States have produced national reports on the application of the Regulation. An example of a national report is:

"Consultation on the implementation of EU Regulation(EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents and the UK's ratification of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974" of August 2012:

<https://www.gov.uk/government/consultations/consultation-on-the-implementation-of-eu-regulation-ec-392-2009>

⁸ http://ec.europa.eu/priorities/docs/political-guidelines-short_en.pdf

This can provide useful insight into the national procedures for implementation of the Regulation and the stakeholders consulted.
(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)
None so far
(D.4) Consultation
<p>For the purposes of this evaluation the Commission needs to consult with:</p> <ul style="list-style-type: none"> (a) MS as flag State and as port State; (b) shipowners engaged in passenger carriage in the different types of carriage (ICS, ECSA, CLIA, BIMCO); (c) passengers/victims associations (e.g. International Cruise Victims Associations, SOS Catastrophes, national consumer protection organisations, BEUC); (d) insurers providing cover for non-war risks (International Group of P&I Clubs, IUMI) and for war risks (IUMI); (e) third States whose ships perform carriage falling under the Regulation; (f) law firms representing clients for claims under the Regulation; (g) academics publishing on the Regulation and the Convention. <p>The consultation exercise will include two main axes of actions: (1) open public consultation of the general public, and (2) a set of targeted measures tailored for particular stakeholders groups, including survey, interviews and case studies. The open public consultation is expected to take place in the first quarter of 2016 (launched end of 2015), whereas the targeted survey, interviews and case studies will be conducted in the second quarter of 2016.</p> <p>The results of the Stakeholders' consultations will be summarised by the Commission in a report to be published on the consultation website as well.</p> <p>The final synopsis report on all consultation activities will describe how feedback was incorporated into the Commission's evaluation of the Regulation.</p>
(D.5) Further evidence to be gathered
Deficiencies recorded on THETIS will be compiled by EMSA and passed on to the Commission for the purposes of the evaluation. In addition, the report may also rely on information from EMCIP (European Marine Casualty Information Platform) on the casualties involving passenger ships (this has already been done for domestic voyages in the past 4 years in the passenger ship safety legislation REFIT context) and relevant input from the involved operators. This could become a set of case studies in the report, in which questions, such as e.g. why passengers failed to receive adequate compensation or how much they think they should be entitled to, could be examined (subject to data availability) .

E. Other relevant information/ remarks

ANNEX I Intervention Logic



