Summary of the Open Public Consultation results for the ex-post evaluation of Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents

The Open Public Consultation (OPC) for the ex-post evaluation of Regulation 392/2009 was launched by the European Commission on 29 July and it remained open until 31 October 2016 (one response received with a two-week delay was accepted and included in the results of the OPC). The questionnaire included mainly questions evaluating the application of the Regulation since its entry into force on 31/12/2012 but also included few forward-looking questions to determine whether an impact assessment for the extension of the scope of the Regulation could be feasible at this stage, given the relatively limited experience gained with the application of the Regulation and the Athens Convention, as amended by the 2002 Protocol, so far.

Specific sets of questions were presented to different stakeholder groups: i) passengers/individuals, ii) ship owners/ship operators, iii) insurers, iv) EU/EEA Member States; while a 'General' section was addressed to all respondents. Respondents were also given the option to upload documents they considered relevant.

The OPC questionnaire was made available via the European Commission Open Public Consultations website¹ and the DG MOVE website². The external contractor (Ecorys NL, in consortium with Grimaldi Studio Legale, and Erasmus School of Law – University of Rotterdam) commissioned with producing a support study to assist the Commission in this ex-post evaluation also promoted the OPC questionnaire to the stakeholder contacts made for the purposes the study (i.e. interviews, academic networks etc.).

Overview of Responses

1. Participation to this OPC has been low with only 16 respondents to the on-line questionnaire. Most responses were given on behalf of Member State authorities (policy-making and inspectorate) (6), ship owners (4) and individuals responding in their capacity as passengers (3). Other stakeholder groups, such as academics, insurers, or lawyers with experience in claims under the Regulation/Convention, have been less represented. With this response rate in mind the results of the OPC cannot be considered as representative of the opinions of the relevant stakeholder groups, and will have to be read together with the results of other stakeholder consultation activities in the context of the ex-post evaluation. They do, however, provide an indication of the views collected by the most interested stakeholders.

2. Respondents welcomed the introduction of the Regulation. The reasons for this positive reception vary. Passengers are happy with the improvement in passenger rights protection. Ship owners are content with the harmonisation and level playing field brought by the Regulation. While national authorities respondents appreciate both of the above benefits of the Regulation.

¹ http://ec.europa.eu/yourvoice/consultations/index_en.htm
² https://ec.europa.eu/transport/media/consultations_en
3. As far as information on the provisions of the Regulation is concerned, passengers seem to be mostly only vaguely informed of the specific provisions of the Regulation, and this affected their opinions over the appropriateness of the compensation levels or the way in which it is provided. Notably, only one of the responses was based on personal experience. On the contrary, ship owners stated being more aware of the Regulation provisions.

4. The Regulation is seen as a relevant tool to improve passenger rights protection and create a level playing field for operators. Also respondents largely recognised the added value of providing a more balanced framework of passenger rights protection. On the other hand it is not considered an appropriate tool to incentivise safety and security performance of operators. All in all, the majority of respondents see the objectives of the Regulation as relevant to the needs of the maritime transport sector.

5. The costs induced by the Regulation are seen mainly in the form of mild insurance premium increases for ship owners, which however have not resulted in passenger fare increases. On the other hand, national authorities report an increase in administrative burden.

6. Overall, the Regulation is largely seen as an improvement to the previously existing framework of national and international legislation covering liability issues. Also most respondents stated they perceive no difficulty with the application of the Regulation in parallel with the Athens Convention as amended by the 2002 Protocol.

7. When asked regarding the appropriateness of the current scope of the Regulation, most respondents see no need for changes in the current scope including only class A and B of domestic carriage. Despite the expectation of slightly more respondents that this would mean better protection of passenger rights, there are high concerns regarding the disproportionate burden potentially put on smaller operators in this case leading to the view that provisions for domestic and international transport should differ. Finally, as mentioned by one of the respondents regarding the application of the Regulation to domestic carriage, the extensive use of the option to defer the application of the Regulation to classes A and B of domestic carriage by Member States\(^3\) forms an obstacle to an evidence-based ex-post evaluation of the Regulation’s impact on domestic transport.

Next Steps in the ex-post evaluation

The OPC was only one activity undertaken by the Commission to consult stakeholders in the context of the ex-post evaluation of Regulation (EC) No 392/2009, while the full extent of stakeholder

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\(^3\) The possibility to defer the application of the Regulation until 31/12/2016 for class A, and 31/12/2018 for class B ships, in accordance with Article 11 of the Regulation, has been opted for by 10 Member States. See relevant table at: https://ec.europa.eu/transport/sites/transport/files/themes/passengers/maritime/doc/application-of-regulation-392-2009.pdf
consultation activities will be reported in an Annex to the Commission Staff Working Document reporting on the ex-post evaluation to be adopted in the course of 2017\textsuperscript{4}.

Please note that the support study carried out by the external contractors assisting the Commission will be published as well on the Ex-post Evaluation webpage in DG MOVE’s website in Q1 2017. This will include the contractors' view of stakeholder consultation activities.

\textit{Disclaimer}

\textit{The contributions received in the response to the OPC and summarised above cannot be regarded as the official position of the Commission and its services on the Regulation or any aspects thereof; and, thus, they do not bind the Commission in any way.}

\textsuperscript{4} The Commission SWD with its Annexes, including the synopsis report, will also be made available on the webpage of the Ex-post Evaluation of Regulation (EC) No 392/2009: \url{https://ec.europa.eu/transport/node/4791}