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COUNCIL DECISION

of 12 December 2011

concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof

(2012/23/EU)

(OJ L 8, 12.1.2012, p. 13)

Amended by:

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(2012/23/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(1) and points (a) and (c) of Article 81(2), in conjunction with point (a) of Article 218(6) and the first subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) The Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("Athens Protocol") represents a major improvement to the regime relating to the liability of carriers and the compensation of passengers carried by sea.

(2) The Athens Protocol modifies the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and establishes in Article 15 that the two instruments shall, as between the Parties to the Athens Protocol, be read and interpreted together as one single instrument.

(3) Articles 10 and 11 of the Athens Protocol affect Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([1]). The Union thus has exclusive competence as regards Articles 10 and 11 of the Athens Protocol.

(4) Upon accession of the Union to the Athens Protocol, the rules on jurisdiction set out in Article 10 thereof should take precedence over the relevant Union rules.

(5) However, the rules on recognition and enforcement of judgments laid down in Article 11 of the Athens Protocol should not take precedence either over the relevant rules of the Union, as extended to Denmark by the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ([2]), or the rules of the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 ([3]) or the Lugano Convention on jurisdiction and the recognition and enforcement

([1]) OJ L 12, 16.1.2001, p. 1.
([2]) OJ L 299, 16.11.2005, p. 62.
([3]) OJ L 319, 25.11.1988, p. 9.

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of judgments in civil and commercial matters of 30 October 2007 ([1]), since the effect of the application of these rules is to ensure that judgments are recognised and enforced at least to the same extent as under the rules of the Athens Protocol.

(6) The Athens Protocol is open for ratification, acceptance, approval or accession by States and by Regional Economic Integration Organisations which are constituted by sovereign States that have transferred competence over certain matters governed by the Athens Protocol to those Organisations.

(7) According to Article 17(2)(b) and Article 19 of the Athens Protocol, Regional Economic Integration Organisations may conclude the Athens Protocol.

(8) The United Kingdom and Ireland, to which the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, applies, will be bound as part of the European Union by Articles 10 and 11 of the Athens Protocol.

(9) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application in respect of Articles 10 and 11 of the Athens Protocol. It will be bound by these Articles only as a separate Contracting Party.

(10) The majority of the rules of the Athens Protocol have been incorporated into Union law by 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 ([2]). Thus, the Union exerted competence as regards the matters governed by that Regulation. A separate Decision relating to those provisions is to be adopted in parallel to this Decision.

(11) Member States which are to ratify or accede to the Athens Protocol should, if possible, do so simultaneously. Member States should therefore exchange information on the state of their ratification or accession procedures in order to prepare as far as possible the simultaneous deposit of their instruments of ratification or accession. When ratifying or acceding to the Athens Protocol, Member States should make the reservation contained in the IMO Guidelines,

([1]) OJ L 339, 21.12.2007, p. 3.
([2]) OJ L 131, 28.5.2009, p. 24.

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HAS ADOPTED THIS DECISION:

Article 1

The accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 ("Athens Protocol") is hereby approved on behalf of the European Union as regards Articles 10 and 11 thereof.

The text of these Articles is reproduced in the Annex.

Article 2

1. The President of the Council is hereby authorised to designate the person or persons empowered to deposit the instrument of accession of the Union to the Athens Protocol as regards Articles 10 and 11 thereof in accordance with Articles 17(2)(c), 17(3) and 19 of that Protocol.

2. At the time of the deposit of the instrument of accession, the Union shall make the following declaration of competence:

"As regards matters covered by Articles 10 and 11 of the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, which come under Article 81 of the Treaty on the Functioning of the European Union, the Member States of the European Union, with the exception of the Kingdom of Denmark, in accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, have conferred competences to the Union. The Union exercised this competence by adopting Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.".

3. At the time of the deposit of the instrument of accession, the Union shall make the following declaration on Article 17bis(3) of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by Article 11 of the Athens Protocol:

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"1. Judgments on matters covered by the Athens Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, when given by a court of the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden or the United Kingdom of Great Britain and Northern Ireland, shall be recognised and enforced in a Member State of the European Union in accordance with the relevant rules of the European Union on the subject.

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2. Judgments on matters covered by the Athens Protocol, when given by a court of the Kingdom of Denmark, shall be recognised and enforced in a Member State of the European Union in accordance with the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

3. Judgments on matters covered by the Athens Protocol, when given by a court of a third State

(a) bound by the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 shall be recognised and enforced in the Member States of the European Union in accordance with that Convention;

(b) bound by the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 shall be recognised and enforced in the Member States of the European Union in accordance with that Convention.".

4. The person or persons designated under paragraph 1 of this Article shall make the reservation contained in the IMO Guidelines when depositing the instrument of accession of the Union to the Athens Protocol as regards Articles 10 and 11 thereof.

Article 3

The Union shall deposit its instrument of accession to the Athens Protocol as regards Articles 10 and 11 thereof by 31 December 2011.

Article 4

Member States shall take the necessary steps to deposit the instruments of ratification of, or accession to, the Athens Protocol within a reasonable time and, if possible, by 31 December 2011.

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ANNEX

ARTICLES 10 AND 11 OF THE PROTOCOL OF 2002 TO THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 1974

Article 10

Article 17 of the Convention is replaced by the following text:

'Article 17

Competent jurisdiction

1. An action arising under Articles 3 and 4 of this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention, and subject to the domestic law of each State Party governing proper venue within those States with multiple possible forums:

(a) the court of the State of permanent residence or principal place of business of the defendant, or

(b) the court of the State of departure or that of the destination according to the contract of carriage, or

(c) the court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or

(d) the court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2. Actions under Article 4bis of this Convention shall, at the option of the claimant, be brought before one of the courts where action could be brought against the carrier or performing carrier according to paragraph 1.

3. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.'.

Article 11

The following text is added as Article 17bis of the Convention:

*'Article 17*bis

Recognition and enforcement

1. Any judgment given by a court with jurisdiction in accordance with Article 17 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognised in any State Party, except

(a) where the judgment was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present the case.

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2. A judgment recognised under paragraph 1 shall be enforceable in each State Party as soon as the formalities required in that State have been complied with. The formalities shall not permit the merits of the case to be re-opened.

3. A State Party to this Protocol may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraphs 1 and 2.’.