



Ports and Yachting Directorate

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Notice to: **Masters**
Commercial Vessels Operators
Ship Owners
Ship Agents
Terminal Operators



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Regulation (EC) No. 392/2009 concerning the liability of carriers by sea in the event of accidents

The attention of all Masters, Carriers, Owners, Operators and Agents of all vessels and terminals is hereby being directed to Regulation (EC) No. 392/2009 of the European Parliament and of the Council of the 23rd of April of 2000 on the liability of carriers of passengers by sea in the event of accidents. This Regulation shall come into force on the **31st of December of 2012**.

All Masters, Carriers, Owners, Operators and Agents are being requested to take note of and use the attached summaries of the Regulation drafted in accordance with Article 7 thereof in order to ensure compliance with the requirements of the said Article 7 stating as follows:

Information to Passengers

Without prejudice to the obligations of tour operators set out in Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, the carrier and/or performing carrier shall ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation.

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 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.

Capt David Bugeja
Chief Officer
Ports and Yachting Directorate

17 January 2013

Summary of provisions concerning the rights of passengers travelling by sea in the event of accidents¹

[The carrier shall provide at least this information to the passengers prior to or on departure to the extent this Regulation applies to their carriage. This summary has no legal value]

Regulation (EC) No 392/2009 on the liability of carriers of passengers in the event of accidents becomes applicable in the EU and EEA States² on 31 December 2012. It incorporates certain provisions of the 1974 Athens Convention (as amended by the 2002 Protocol) relating to the carriage of passengers and their luggage by sea.

The Regulation applies to all carriers in international carriage, including carriage between EU Member States, and certain types of domestic carriage, provided that:

- the ship is flying the flag of a Member State or is registered in a Member State, or
- the contract of carriage has been made in a Member State, or
- the place of departure or destination or both, according to the contract of carriage, are in a Member State.

It covers liability of the carrier in respect of passengers, their luggage and their vehicles, as well as mobility equipment, in the event of accidents.

This Regulation does not affect the right of carriers to limit their liability for accidents in accordance with the International Convention on Limitation of Liability for Maritime Claims of 1976, as amended by the 1996 Protocol in its up to date form.

Accidents under the Regulation include both 'shipping'³ and 'non-shipping' incidents in the course of the carriage.

RIGHTS OF PASSENGERS

Right to compensation for death or personal injury

Shipping incident: the passenger has a right to compensation from the carrier or the carrier's insurance provider of up to 250.000 SDR⁴ in any event, with the exception of circumstances beyond the carrier's control (i.e. act of war, natural disaster, act of a third party). Compensation can go up to 400.000 SDR unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: the passenger has a right to compensation from the carrier or the carrier's insurance provider of up to 400.000 SDR, if he/she proves that the incident was the result of the carrier's fault or neglect.

Right to compensation for loss of or damage to cabin luggage

Shipping incident: the passenger has a right to compensation from the carrier of up to 2.250 SDR, unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: the passenger has a right to compensation from the carrier of up to 2.250 SDR, if he/she proves that the incident was the result of the carrier's fault or neglect.

¹ Summary drafted in accordance with article 7 of Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 (OJ L 131, 28.5.2009, p. 24) on the liability of carriers of passengers by sea in the event of accidents.

² The Regulation will become applicable to EEA States in accordance with the Decision of the EEA Joint Committee No 17/2011 (OJ L 171, 30.6.2011, p. 15) following the relevant notifications by EEA States concerned.

³ 'Shipping incident' for the purposes of this Regulation include: shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship or defect in the ship. All other incidents in the course of the carriage for the purposes of this summary are 'non-shipping' incidents.

⁴ Loss or damage suffered as a result of an accident are calculated on the basis of "units of account", which are "Special Drawing Rights" (SDR) for Member States parties to the International Monetary Fund (all EU Member States). Information and conversion rates for SDR can be found on: <http://www.imf.org/external/np/exr/facts/sdr.htm>. On 26 November 2012 1 SDR = 1.18 EUR.

Right to compensation for loss of or damage to luggage other than cabin luggage

The passenger has a right to compensation from the carrier of up to 12.700 SDR (vehicles, including luggage carried in or on the vehicle) or 3.375 SDR (other luggage), unless the carrier proves that the incident occurred without his fault or neglect.

Right to compensation for loss of or damage to valuables

The passenger has a right to compensation from the carrier of up to 3.375 SDR for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments and works of art, only when these have been deposited with the carrier for the agreed purpose of safe-keeping.

Right of a passenger with reduced mobility to compensation for loss of or damage to mobility equipment or other specific equipment

Shipping incident: the passenger has a right to compensation from the carrier corresponding to the replacement value or the repair costs of the equipment concerned, unless the carrier proves that the incident occurred without his fault or neglect.

Non-shipping incident: the passenger has a right to compensation from the carrier corresponding to the replacement value or the repair costs of the equipment concerned, if he/she proves that the incident was the result of the carrier's fault or neglect.

Right to an advance payment in the event of a shipping incident

In case of death or personal injury, the passenger or other person entitled to damages has a right to an advance payment to cover immediate economic needs. The payment shall be calculated on the basis of the damage suffered, shall be made within 15 days and shall not be less than 21.000 EUR in the event of death.

ELEMENTS OF PROCEDURE & OTHER MATTERS**Written notice**

In case of damage to cabin or other luggage, the passenger must give timely⁵ written notice to the carrier. Failure to do so will result in the passenger losing his/her right to compensation.

Time limits for exercise of the passenger's rights

In general, any action for damages before a competent court must be introduced within a period of 2 years. The starting point of this limitation period may differ depending on the nature of the loss.

Exemptions concerning liability

Liability of the carrier can be reduced if he 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 limits on the different amounts for compensation will not apply if it is proved that the damage resulted from an act of the carrier, or a servant or agent of the carrier or of the performing carrier, done with the intent to cause such damage or with knowledge that such damage would probably result.

⁵ In cases of apparent damage, written notice must be given before or at disembarkation for cabin luggage, and before or at re-delivery for other luggage. In cases of non-apparent damage to or loss of luggage, written notice must be given within 15 days from disembarkation or re-delivery (or scheduled re-delivery in the event of loss).