Summary of the provisions on passengers’ rights in the event of accidents at sea

Regulation (EC) No. 392/2009 on the liability of carriers of passengers by sea in the event of accidents has been applied in the countries of the European Union and the European Economic Area since 31 December 2012. It includes some of the provisions of the Athens Convention of 1974 relating to the Carriage of Passengers and their Luggage by Sea (as amended by the protocol of 2002).

The Regulation applies to all carriers engaging in international transports, including transports between EU Member States and certain types of domestic transports provided that:
- the ship flies the flag of a Member State or is registered in a Member State, or
- the carriage agreement was concluded in a Member State, or
- the point of departure and/or destination specified in the carriage agreement are located in a Member State

It regulates the carrier’s liability for passengers, their luggage and their vehicles, as well as for mobility equipment, in the event of accidents.

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

Within the meaning of this Regulation, the term “accident” shall cover both “shipping incidents” and other incidents occurring during transportation.

PASSENGERS’ RIGHTS

Claim for compensation for death or personal injury

Shipping incident: In any case, passengers are entitled to compensation by the carrier or the carrier’s insurer up to an amount of 250,000 SDR, except for circumstances beyond the carrier’s control (i.e. an act of war, natural catastrophe, act of a third party). The maximum amount of damages that can be awarded is 400,000 SDR unless the carrier proves that the incident occurred without its fault.

Incidents other than shipping incidents: Passengers are entitled to compensation by the carrier or the carrier’s insurer up to an amount to 400,000 SDR if they prove that the incident occurred due to the carrier’s fault.

Claim for damages for the loss of or damage to cabin luggage

Shipping incident: Passengers are entitled to compensation by the carrier up to an amount of 2,250 SDR unless the carrier proves that the incident occurred without its fault.

Incidents other than shipping incidents: Passengers are entitled to compensation damages by the carrier up to an amount of 2,250 SDR if they prove that the incident occurred due to the carrier’s fault.

2 Based on decision No. 17/2011 (Official Journal L 171 of 30 June 2011, p. 15) of the EEA Joint Committee, the Regulation will be applied in the countries of the European Economic Area after all pertinent notifications have been made by the affected countries of the European Economic Area.
3 “Shipping incidents” within the meaning of this Regulation include: shipwreck, capsizing, collision or stranding of the ship, explosion or fire on the ship, or a defect of the ship. For the purposes of this summary, all other incidents occurring during transportation shall be considered “other incidents”.
4 Any loss or damage caused by an accident is calculated on the basis of “units of account”; these are “Special Drawing Rights” (SDR) for the member states of the International Monetary Fund (including all EU Member States).
Information and conversion rates for SDR are available on the following website: http://www.imf.org/external/np/exr/facts/sdr.htm. On 26 November 2012, 1 SDR was equivalent to 1.18 EUR.
Claim for damages for the loss of or damage to luggage other than cabin luggage

Passengers are entitled to compensation by the carrier up to an amount of 12,700 SDR (vehicles, including the luggage transported in or on the vehicle) or 3,375 SDR (other luggage) unless the carrier proves that the incident occurred without its fault.

Claim for damages for the loss of or damage to valuables

Passengers are only entitled to compensation by the carrier up to an amount of 3,375 SDR for the loss of or damage to money, negotiable securities, gold, silver, jewels, jewellery and works of art if they were deposited with the carrier for safekeeping.

Claim of passengers with limited mobility for damages for the loss of or damage to mobility equipment or other special equipment

Shipping incident: Passengers are entitled to compensation by the carrier in the amount equal to the replacement cost or repair costs of the respective equipment unless the carrier proves that the incident occurred without its fault.

Incidents other than shipping incidents: Passengers are entitled to compensation by the carrier in the amount equal to the replacement cost or repair costs of the respective equipment if they prove that the incident occurred due to the carrier’s fault.

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

In the event of the death or personal injury of a passenger, that passenger or another person entitled to damages is entitled to an advance payment to cover the immediate economic needs. The advance payment will be calculated on the basis of the incurred damage, shall be made within 15 days, and, in the event of death, shall be no less than 21,000 EUR.

PROCEDURES & MISCELLANEOUS

Written notification

If cabin luggage or other luggage is damaged, passengers must notify the carrier of the damage in writing in due time. Passengers who do not comply with this requirement forfeit their claims for damages.

Deadlines for asserting passenger rights

In general, all claims for damages must be submitted to the competent court within two years. The start of this limitation period may differ depending on the type of loss.

Disclaimers

The carrier’s liability may be limited if it can prove that the death or personal injury of a passenger or the loss of or damage to his/her luggage was caused entirely or partially by the passenger himself/herself.

The limitation of the various amounts of damages does not apply to cases where it can be shown that the damage was due to an act of the carrier or an employee or agent of the carrier or the performing carrier that was committed with the intention to cause such damage or with the awareness that such damage would likely occur.

5 If the damage of cabin luggage is apparent, passengers must notify the carrier before or at the time of disembarkation. With respect to other luggage they must notify the carrier before or at the time when it is returned to them. If the damage is not apparent or if the luggage is lost, they must notify the carrier in writing within fifteen days after the day of disembarkation or when the luggage was returned (or – if the luggage is lost – after the time when the luggage ordinarily should have been returned).