EUROPEAN
COMMISSION

Brussels, 28.9.2017
SWD(2017) 329 final

COMMISSION STAFF WORKING DOCUMENT

Ex-post evaluation of Regulation (EC) No.392/2009 on the liability of carriers of passengers by sea in the event of accidents

{SWD(2017) 328 final}

Section 1 Introduction

Regulation (EC) No 392/2009 establishes liability rules for damages caused to passengers in case of accidents during travel by sea. It covers both international and some types of domestic carriage. In particular, it establishes strict liability, meaning liability without needing to establish fault, for carriers in case of an accident resulting from a 'shipping incident' as defined in the Regulation. For all other cases, when the accident is not due to a shipping incident (e.g. bad weather) the passenger must prove fault or neglect on the part of the carrier. At the same time, the Regulation obliges the carrier to have insurance, and gives passengers the right to claim compensation directly from the carrier's insurer.

The system of operator liability introduced by the Regulation is based on the Protocol of 2002 to the Athens Convention on the Carriage of Passengers and their Luggage by Sea, 1974 (hereinafter referred to as the 'Athens Convention'), adopted by the International Maritime Organization ('IMO'). However, it differs from the Protocol in terms of its scope of application, and it adds to the requirements of the Protocol specific provisions concerning the rights of passengers with reduced mobility, the right of an advance payment in case of personal injury or death, and the obligation to provide information to all passengers on their respective rights at the point of purchase of their tickets, or – at least – at the point of departure of their journey. The Regulation also makes it mandatory in the EU for operators to take out war and terrorism risk insurance which is 'capped' to a maximum amount set in accordance with the IMO Reservation and Guidelines to the 2002 Protocol adopted in 2006[1], in order to ensure the ability of the insurance market to cover the relevant risks.

- *Purpose of the evaluation*

This ex-post evaluation has been carried out in order to examine the application the Regulation during the first three years since its date of application on 31 December 2012. Within the Regulation itself specific points have been raised for further consideration by the Commission and which may be subject to a possible impact assessment and which the current ex-post evaluation was tasked with gathering evidence for. These points are: (a) the scope of the Regulation and the possibility of extending it to all types of domestic passenger carriage as a mandatory requirement (Article 1(3) of the Regulation); and (b) the financial impact of the Regulation in terms of the cost of premiums on carriers operating domestically, in particular on class B[2] which are already included in its scope of application.

The present evaluation is also set to satisfy the requirement of Article 8 of the Regulation, whereby the Commission must report on its application, taking into account also pertinent economic developments and developments in international fora.

[1] 'IMO Reservation and Guidelines for Implementation of the Athens Convention', adopted by the Legal Committee of the IMO on 19 October 2006 (hereinafter referred to as 'IMO Guidelines 2006'), which are attached to the Regulation as 'Annex II'.

[2] The different classes of domestic passenger ships are defined in Directive 2009/45/EC on safety rules and standards for passenger ships (recast Council Directive 98/18/EC), OJ L 163, 25.6.2009, p. 1. The Directive, in its Article 4 establishes four classes of passenger ships, namely classes A, B, C, D, which are defined based on the distance from the closest place of refuge and the average wave height, starting from the longest distance and highest wave height. The Regulation defines its scope of application to domestic carriage of passengers by sea on the basis of this classification system.

This evaluation provides an overview of the application of this relatively new piece of EU legislation concerning the rights of passengers travelling by sea in the event of accidents, and the corresponding obligations of carriers in particular as regards insurance and compensation for relevant losses during accidents. The evaluation also takes into account how the entry into force of the relevant international instrument, namely the Protocol of 2002 to the Athens Convention, affects these rights and obligations in the EU.

The results of the evaluation and, in particular, the recommendations arising from this process are intended to inform the Commission's decision on a possible impact assessment for any amendments to the Regulation. This is in accordance with the principle of 'evaluate first', established in the Commission's Better Regulation Guidelines. The appropriateness of an impact assessment and, especially, its timing are in this case determined by the evidence – qualitative and quantitative – collected on the application of the Regulation in the ex-post evaluation, as well as any conclusions that can be safely drawn from this evidence.

- *Scope of the evaluation*

The evaluation covers the period of application of the Regulation starting from the 31st of December 2012 until the 31st of December 2015 (3 years). It has looked into all elements of the Regulation as applied in maritime passenger traffic across the EU[3]. It has taken into account the exemptions to the Regulation that applied in this period – and still apply to some extent – for the domestic carriage of classes A and B, in accordance with Article 11(2) and (3). As the table that has been published by the Commission in 2013 shows[4], 10 Member States have opted to exempt domestic carriage under classes A and B from the scope of the Regulation. At the same time, the evaluation takes into account the application of the Regulation in some Member States to classes of domestic carriage beyond its mandatory scope, namely its application in three Member States to classes C and D, making use of the possibility expressly provided for in the last sub-paragraph of Article 2.

The Protocol of 2002 to the Athens Convention, which is annexed to the Regulation, and the provisions thereof that become applicable through the Regulation, are also taken into consideration. Furthermore, the accession of the European Union to the Protocol of 2002, through Council Decisions 2012/22/EU[5] and 2012/23/EU[6], which took effect with the entry into force of the Protocol in April 2014, is a factor that has been considered in the ex-post evaluation of the Regulation.

The evaluation also compares the Regulation with similar pieces of legislation in other modes of transport (e.g. aviation, rail), in order to identify any similarities or gaps. It also takes into account EU legislation that applies alongside the Regulation concerning the rights of passengers in the event of accidents when travelling by sea.

---

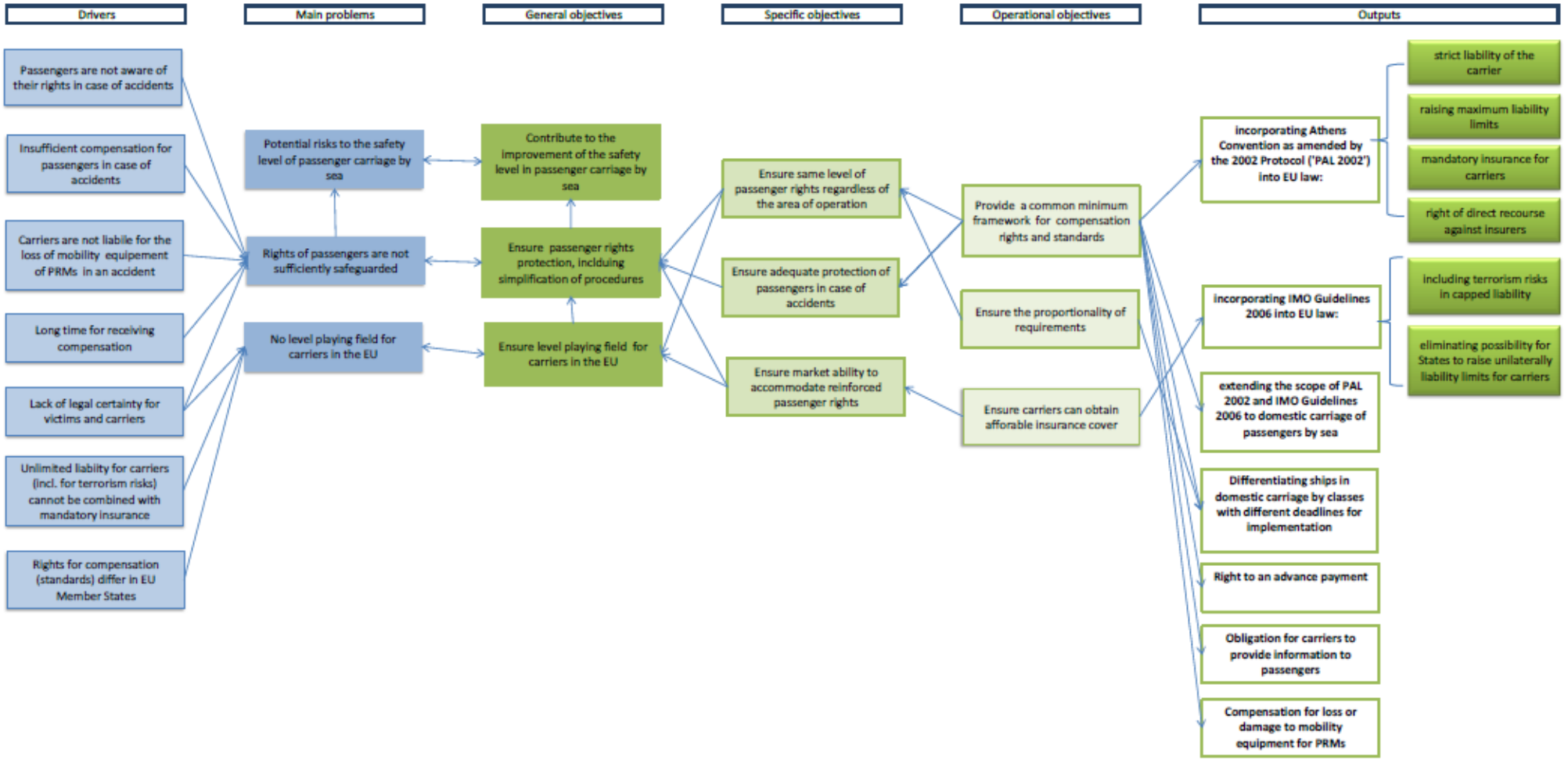
[3] The Regulation has also been incorporated into the EEA Agreement, Annex XIII, Section V, and, thus, it is applicable to the EEA EFTA States (namely Norway and Iceland). Norway has been included in the scope of this evaluation, as it offered input to the stakeholder consultation activities and it has a high number of vessels and passenger traffic covered by the Regulation (ranked third highest in Europe, after Italy and Greece – see pp. 40-42 of the Final Report to the Support Study by Ecorys (consortium) https://bookshop.europa.eu/en/support-study-to-the-evaluation-of-regulation-ec-392-2009-pbMI0417106/

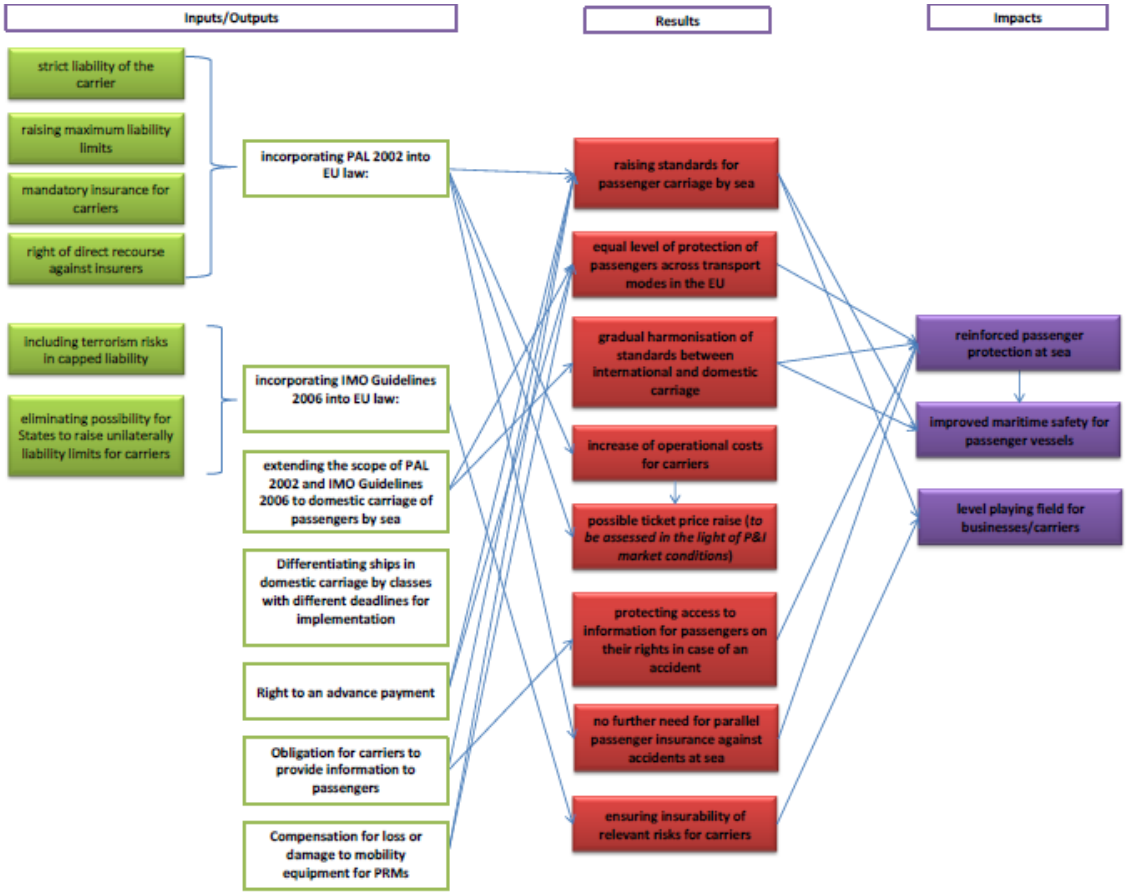
[4] See table at: https://intragate.ec.europa.eu/decide/sep/entrance?Mockingbird_v3.1.1.10749-2017-01-25T14:45:51.617+01:00#/actionsContent/SPECIFIC-DOSSIER-2015-34654/ (updated last in January 2017).

[5] OJ L 8, 12.1.2012, p. 1

[6] OJ L 8, 12.1.2012, p. 13

Finally, in terms of accidents, the evaluation has used data available to the Commission on accidents reported by Member States via the EMCIP (European Marine Casualty Information Platform) database within this period in order to identify suitable case studies where the application of the Regulation could be examined in more detail. The EMCIP database is managed by the European Maritime Safety Agency (EMSA), which contributed to the fact-gathering stage of the evaluation.


Drivers
Main problems
General objectives
Specific objectives
Operational objectives
Outputs
Passengers are not aware of their rights in case of accidents
Insufficient compensation for passengers in case of accidents
Carriers are not liable for the loss of mobility equipement of PRMs in an accident
Long time for receiving compensation
Lack of legal certainty for victims and carriers
Unlimited liability for carriers (incl. for terrorism risks) cannot be combined with mandatory insurance
Rights for compensation (standards) differ in EU Member States
Potential risks to the safety level of passenger carriage by sea
Rights of passengers are not sufficiently safeguarded
No level playing field for carriers in the EU
Contribute to the improvement of the safety level in passenger carriage by sea
Ensure passenger rights protection, incldiuing simplification of procedures
Ensure level playing field for carriers in the EU
Ensure same level of passenger rights regardless of the area of operation
Ensure adequate protection of passengers in case of accidents
Ensure market ability to accommodate reinforced passenger rights
Provide a common minimum framework for compensation rights and standards
Ensure the proportionality of requirements
Ensure carriers can obtain afforable insurance cover
incorporating Athens Convention as amended by the 2002 Protocol ('PAL 2002') into EU law:
strict liability of the carrier
raising maximum liability limits
mandatory insurance for carriers
right of direct recourse against insurers
incorporating IMO Guidelines 2006 into EU law:
including terrorism risks in capped liability
eliminating possibility for States to raise unilaterally liability limits for carriers
extending the scope of PAL 2002 and IMO Guidelines 2006 to domestic carriage of passengers by sea
Differentiating ships in domestic carriage by classes with different deadlines for implementation
Right to an advance payment
Obligation for carriers to provide information to passengers
Compensation for loss or damage to mobility equipment for PRMs


Inputs/Outputs
Results
Impacts
strict liability of the carrier
raising maximum liability limits
mandatory insurance for carriers
right of direct recourse against insurers
including terrorism risks in capped liability
eliminating possibility for States to raise unilaterally liability limits for carriers
incorporating PAL 2002 into EU law:
incorporating IMO Guidelines 2006 into EU law:
extending the scope of PAL 2002 and IMO Guidelines 2006 to domestic carriage of passengers by sea
Differentiating ships in domestic carriage by classes with different deadlines for implementation
Right to an advance payment
Obligation for carriers to provide information to passengers
Compensation for loss or damage to mobility equipment for PRMs
raising standards for passenger carriage by sea
equal level of protection of passengers across transport modes in the EU
gradual harmonisation of standards between international and domestic carriage
increase of operational costs for carriers
possible ticket price raise (to be assessed in the light of P&I market conditions)
protecting access to information for passengers on their rights in case of an accident
no further need for parallel passenger insurance against accidents at sea
ensuring insurability of relevant risks for carriers
reinforced passenger protection at sea
improved maritime safety for passenger vessels
level playing field for businesses/carriers

Section 2 Background to the initiative

Description of the initiative and its objectives

Regulation (EC) No 392/2009 introduces a system of operator liability for maritime passenger carriage based on the Protocol of 2002 to the Athens Convention. However it differs from the Protocol in terms of scope and adds to the requirements of the Protocol.

The objectives of this Regulation can be outlined as follows. 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. The Regulation also aims at establishing a level playing field for the operators taking into account the insurability of risks and the differences among the different types of carriage. Moreover, the Regulation aims at creating an additional, indirect, incentive for better safety performance of operators in EU waters, as carriers who now have to take out insurance for the carriage of passengers by sea will have to demonstrate that their ships are safe in order to obtain the relevant insurance cover. Finally, the Regulation contributes to the creation of 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]

In terms of the timeline envisaged for this Regulation to produce its effects, this was tied to the entry into force of the 2002 Protocol, which was expected to enter into force before the latest date of application foreseen for the Regulation, i.e. 31/12/2012. This was intended to ensure a more widespread effect of the intervention on the sector and the passengers concerned, as it would be coupled with international action. The intention of the co-legislators when adopting the Regulation ahead of the entry into force of the 2002 Protocol was not to have two separate, parallel regimes, but one, at least in so far as the requirement to have adequate insurance is concerned. This was justified on the basis of Article 4 of Council Decisions 2012/22/EU[8] and 2012/23/EU[9], whereby all EU Member States were called upon to take the necessary steps to ratify or accede to the Athens Protocol within a reasonable time and, if possible, by 31 December 2011 , which would have resolved any difficulties with uniform implementation of these instruments.

More specifically, as regards the objectives of the Regulation, as outlined above, one must note the possibility given to Member States to opt-out of the domestic application of the Regulation (for classes A and B) until a later date (31/12/2016 and 31/12/2018 respectively for classes A and B). This is justified by the wish of the co-legislator to allow more time for domestic operators to make the necessary arrangements to obtain the necessary insurance cover and to make any changes in their operations to align these with the requirements of the Regulation. Furthermore, it was also intended to allow national administrations of Member States to cope better with the monitoring of the relevant requirements and certification tasks. Finally, this was linked to the vision of the co-legislators to extend "step-by-step" the system

[7] The policy intervention of the Regulation is outlined in the Roadmap for this evaluation published in September 2015: http://ec.europa.eu/smart-regulation/roadmaps/index_en.htm

[8] OJ L 8, 12.1.2012, p. 1.

[9] OJ L 8, 12.1.2012, p. 13.

of liability provided for by this Regulation to the different classes of ships operating domestically within each Member State[10].

Baseline

Prior to the adoption of the Regulation, the rights of passengers travelling by sea in the event of accidents were subject to national law, which varied significantly as regards the relevant thresholds of compensation, the grounds of and exceptions to the carrier's liability. Questions related to jurisdiction had to a great extent already been resolved by the adoption of the 1968 Brussels Convention on jurisdiction and recognition and enforcement of judgments in civil and commercial matters and the Brussels I Regulation (44/2001)[11] providing, as a main rule, for the jurisdiction of the courts of the Member State where the defendant is domiciled and certain alternative jurisdiction rules.

Also, it is important to note that the Athens Convention 1974 was ratified by a number of EU Member States; thus, the rights of passengers established therein were applicable in many Member States. However, as it depended on ratification by individual Member States this did neither ensure uniformity across the EU as regards rights of passengers, nor did it establish a sufficient level of protection of these rights (i.e. lower compensation levels, lower threshold for exceptions to carriers' liability).

Section 3 Evaluation Questions

Six evaluation criteria were identified using the Commission's Better Regulation framework, on the basis of which ten (10) evaluation questions were defined, listed below under each relevant evaluation criterion.

Relevance

1. To what extent are the objectives of this initiative still relevant today?

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?

Effectiveness

3. To what extent have the objectives of the Regulation been achieved?

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?

[10] Recital (10) of the Regulation.

[11] Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.01.2001, p. 1, repealed by Regulation 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L OJ L 351, 20.12.2012, p. 1.

5. Has the Regulation lead to any positive or negative unexpected effects?

Efficiency

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?

Coherence

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? Are there any overlaps, gaps or inconsistencies within the legislation itself or within the framework of EU policy?

8. Are the objectives of the Regulation (still) coherent with the EU Transport policy, notably the White Paper on Transport, and the ten policy areas that are set as priorities by the current European Commission (as announced in July 2014[12])?

EU Added Value

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

Complementarity

10. To what extent has the Regulation been successful in supplementing the Athens Convention and any national regimes on liability of passenger carriers in case of accidents at sea applicable in the Member States?

Section 4 Method

The ex-post evaluation of the Regulation was tasked, on one hand, with gathering evidence on its application in general, and, on the other hand, with collecting data and evidence for the specific points raised in the Regulation for further consideration (see Section 1 above). As far as its general application is concerned, the evaluation relied, in principle, on the following three sources of data regarding verification of compliance:
(a) Flag State control of the carriers operating under the flag of Member States checking that they fulfil the requirements of the Regulation as gathered by national competent authorities;
(b) Port State control of the carriers entering EU ports and recording of the lack of certificates of insurance in accordance with the Regulation in a special module created in THETIS (the information system that supports the EU Port State Control inspection regime) for this specific purpose, which is managed by EMSA;
(c) citizen/passenger complaints received directly by the Commission in relation to the Regulation.

[12] Summary of President Juncker's Political Guidelines (July 2014). Source: http://ec.europa.eu/priorities/docs/political-guidelines-short_en.pdf

However, in the absence of any mandatory reporting requirements for Member States on all aspects of the Regulation, additional potential evidence sources were identified by the Commission to support this evaluation (outlined in the Roadmap[13]). The short period of application, combined with the even shorter time-span for the corresponding international instrument – the 2002 Protocol – presented an additional challenge for the evaluation as regards data collection and evidence gathering.

In order to overcome these challenges, the evaluation relied on a support study, which was undertaken by an external contractor. The contractor began work in February 2016 and submitted the final report of the support study in January 2017[14].

The general objective of the study was to provide support to the Commission in carrying out an evaluation of the application of the Regulation. In view of the absence of any complaints addressed to the Commission on its application since its entry into force, and the limited number of recorded deficiencies recorded during port State control related to the Regulation (see Section 1.2 above), the study examined the different aspects of the Regulation and contact the parties directly concerned with its application in detail, including - where possible - people involved in accidents falling under the scope of the Regulation.

An evaluation framework was developed as an aid for the study, which ensured a pragmatic and structured approach to answering each evaluation question, while detailing data needs and data collection tools. The purpose of the evaluation framework was to assist in reaching well-founded, evidence-based conclusions for each of the evaluation questions. In practical terms, the framework was also helpful in linking the questions to specific indicators (e.g. passenger volume developments, insurance premium costs, administrative costs, level of compensation paid), as well as in defining specific approaches on data collection sources and methodology for each of the evaluation questions.

An extensive stakeholder consultation was conducted in the context of this evaluation[15], including a targeted survey addressed to specific stakeholders, a significant number of interviews carried out by the contractor (43 in total), and an open public consultation carried out by the Commission[16]. Stakeholder consultation was the primary source of information, as the desk research carried out by the contractor revealed scarce literature sources, coupled with limited data on compliance with the Regulation available through the three sources of compliance verification outlined above in this Section.

A number of representative case studies (4) were identified[17] through the use of publicly available data on accidents involving passenger ships, and triangulating this with an electronic database established in accordance with Article 17 of Directive 2009/18/EC called the

[13] See p. 5 of the Roadmap, see also footnote 7.

[14] https://bookshop.europa.eu/en/support-study-to-the-evaluation-of-regulation-ec-392-2009-pbMI0417106/

[15] For further details see Annex 2 providing a summary of the consultation process and results, and the 'Consultation Strategy' published at: https://ec.europa.eu/transport/sites/transport/files/carrier-liability-consultation-strategy.pdf

[16] For details on the Open Public Consultation, as well as a summary of its results see: https://ec.europa.eu/transport/node/3738

[17] See Annex 7 to the Support Study Final Report.

European Marine Casualty Information Platform (EMCIP), taking into account that the 'accidents' covered by the reports in EMCIP are not fully overlapping with the 'accidents' falling under the scope of the Regulation (See Section 2 above). As it is made clear in the study supporting the ex-post evaluation[18], the scope of the Regulation is different to the scope of Directive 2009/18/EC on accident investigation[19], which forms the legal basis for EMCIP. Hence, the data of the latter were of limited usefulness to the evaluation other than for the purposes of confirming the choice of three out of four case studies. In order to examine all aspects of the Regulation as far as possible including incidents of terrorism and in view of the absence of any recent accident involving terrorism risks, the fourth case study was an older incident that predated the entry into force of the Regulation.

Limitations in data availability were obvious throughout the study and the evaluation exercise and are due to two main factors:

(1) short period of application of the Regulation, and

(2) an important number of Member States (including the two with the highest passenger volumes in the EU) making use of the possibility to opt out of the application of the Regulation to domestic carriage for a time-period extending beyond the scope of the ex-post evaluation.

In addition, it must be noted that the nature of the subject-matter of the Regulation, i.e. liability of carriers arising out of accidents at sea and compensation rights of passengers, means that typically several years pass before legal cases on a specific accident are settled and closed and before reliable, definitive and comprehensive information thereon can be established. Moreover, in these cases, claimants often opt for out-of-court settlements with the carrier or his insurer, which can also include confidentiality agreements or the concerned parties may not be willing to disclose. Finally, maritime transport passengers, who are essentially the key stakeholder the Regulation aims to protect, are generally less accessible to respond to questionnaires or interview requests on the Regulation compared to the other type of stakeholders concerned by the Regulation (i.e. shipowners, insurers, national administrations). This is due to the extremely broad group of individuals concerned as passengers with the Regulation, and their lack of organisation in associations or other representative bodies in most cases. The fact that the Regulation is separate to the more general waterborne passenger rights Regulation[20] dealing with delays, cancellations and other more common causes of concern for passengers also acted as an aggravating factor to this lack of sufficient data.

In order to mitigate the above limitations, the contractor in consultation with the Commission took a series of measures to address the difficulties in data collection. For instance, the support study specifically targeted the stakeholders concerned with tailored questions in each case, through the survey and – more effectively – through interviews. In particular, on the basis of the four case studies identified for the purposes of the evaluation, the contractor contacted the

[18] See pp. 43-46 of the Support Study Final Report

[19] OJ L 131, 28.05.2009, p.114.

[20] Regulation (EU) 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004, OJ L334, 17.12.2010, p.1

parties concerned and was able to also receive input from representatives of passengers involved in these accidents.[21]

These limitations affected also the timing of the different steps of the evaluation and resulted in some changes in the original planning. More specifically, while the open public consultation was originally planned to precede the targeted survey and interviews, it was decided to leave this step for later stage of the evaluation. This was done in order to allow the open public consultation to rely on some of the findings of the desk research and initial interviews, at least in so far as the direction of the questions was concerned. Moreover, it was decided that the open public consultation would include some forward-looking questions addressing the specific points raised in the Regulation for further consideration (see Section 1 above), in order to explore the views of stakeholders on whether there was a clear preference already established in public opinion, in view of the lack of complete quantitative evidence on the application of the Regulation to domestic carriage. A different effect on the timing of the evaluation was the small delay in the conclusion of the support study, due to the need to expand the stakeholder consultation activities to cover for the lack of other data.

In general, the support study offered a broad range of qualitative data, triangulated through different sources, while recognising the lack of reliable quantitative data input at this moment in time. The conclusions and recommendations of this evaluation by the Commission are based on this evidence and have taken into account the relevant limitations.

Section 5 Implementation state of play (Results)

In the first three years of its application the Regulation has not been applicable in its full scope in all Member States, due to the possibility established in Article 11 for States to exempt domestic carriage of passengers by sea in classes A and B, the two types of domestic carriage covered by the mandatory scope of the Regulation. At the same time and as Article 2 establishes this possibility, three Member States have chosen to apply the Regulation in an extended manner covering all types of domestic carriage, with some adjustments.

As regards the types of vessels covered by the scope of the Regulation, the following conclusions can be drawn on the basis of this evaluation. Firstly, the text of the Regulation contains three specifications as regards ships covered by its provisions:
(1) it makes a direct reference to the Athens Convention as far as international carriage is concerned, where in accordance with Article 1 of the Convention a 'ship' is any sea-going vessel with the exception of air-cushion vehicles;
(2) it refers to Article 4 of the passenger ship safety Directive[22] to identify ships operating domestically that fall within its mandatory scope; and
(3) it establishes the possibility for Member States to apply the Regulation to "all domestic sea-going voyages" without any further distinction on the type of vessel.

[21] See Annexes 10 and 11 to the Support Study Final Report.

[22] See also footnote 2.

Table Application of Article 11 of the Regulation

Application of Article 11 of the Regulation	EU Member States + EEA
Application of the Regulation to domestic carriage Classes A and B since 31/12/2012 application to Classes C and D (in bracket)	The Netherlands, Norway (31/12/2012), Denmark (15/01/2013), Sweden (2/9/2015)
Application of the Regulation to domestic carriage: Class A and B since 31/12/2012	Belgium, Bulgaria, Finland, France, Lithuania, Romania*, Slovenia*
	Landlocked Member States: Austria, Czech Republic*, Hungary, Luxembourg, Slovakia*
Application of the Regulation to domestic carriage: Class A since 31/12/2012 Postponement of application to Class B until 31/12/2018	Ireland*, Poland
Application of the Regulation to domestic carriage: Class A: 31/12/2014 Postponement of application to: Class B until 31/12/2018	Spain
Postponement of application of the Regulation to: Class A: 31/12/2016 Class B: 31/12/2018	Croatia*, Cyprus, Estonia*, Germany, Greece, Italy, Latvia*, Portugal*, United Kingdom
Not applying the Regulation in domestic carriage due to absence of Class A and B ships	Malta

(*): Based exclusively on desk research.
Source: Support Study Final Report, pp. 32-33

As a result of the latter specification, Denmark, The Netherlands, Norway and Sweden have opted to apply the Regulation to all domestic carriage, aiming at an equal level of passenger rights protection in all types of passenger carriage by sea. A further seven Member States have decided to apply the Regulation to both Classes A and B of domestic carriage from 31 December 2012, two more (Ireland and Poland) apply it to Class A from 31 December 2012 while deferring application to Class B to end 2018 and a further Member State (Spain) has decided to apply the Regulation to Class A from end 2014 and to Class B from end 2018. However, it should be noted that the largest group of Member States (nine) have chosen to apply it to Class A from end 2016 and to Class B as from end 2018.

Apart from these specifications, there is still some room for interpretation for Member States in the application of the Regulation, in particular as regards traffic within a single Member State. The evaluation has revealed that a significant number of high-speed craft (HSC), as defined in the passenger ship safety Directive[23], are included in the scope of the Regulation as some States have chosen to apply it to such vessels, and that most Member States will include these ships in the scope of the Regulation when the opt-out period for domestic carriage expires in those States[24].

[23] 'High-Speed Passenger Craft' is defined in Article 2 (g) of Directive 2009/45/EC, see supra note 2, and included in the provisions of Article 4 thereof; however this category is separated from the classification of passenger ships into classes A, B, C and D for safety purposes.

[24] See pp. 40-41 of the Support Study Final Report.

As regards verification of compliance, with regard to those vessels flying the flags of EU/EEA states compliance is ensured by the fact that the flag state either issues the certificate itself or delegates the issuance thereof. Port State control offers a further level of verification in that all vessels calling at EU ports and subject to Port state control in accordance with Directive 2009/16/EC will have their insurance certificates verified. Furthermore, the Commission notes in this regard that it has received no complaints from citizens, economic operators or administrations regarding non-compliance.

Another element pertaining to the scope of application is the number of accidents occurring in the evaluation period, which are covered by the Regulation. As elaborated in Section 4, there is no mandatory reporting of such accidents in place; while the reporting of accidents under Directive 2009/18/EC in EMCIP has a different scope, and thus can only support the drawing of qualitative conclusions on the application of the Regulation. In general, one can conclude based on evidence gathered in this evaluation that there have been incidents falling within the scope of the Regulation in the evaluation period, both in the 'shipping' and in the 'non-shipping' incident category. However there have been no incidents resulting from actions that can be classified as 'war or terrorism' related, which would also be covered by the Regulation – at least in so far as the insurance obligation of the carrier is concerned.

As regard the results of the implementation the most significant seems to have been the introduction of the Athens Protocol standards into EU legislation in terms which should have a knock-on effect on harmonisation and the level playing field across the EU market. Other significant impacts of the Regulation are the provision for advance payment and the obligation on the carrier to provide information. The Regulation does not appear to have produced any unexpected negative impacts. The findings indicate that the insurability of carriers has not been affected by the Regulation. Insurance premiums and passenger fares have been largely unaffected. There have been slight unexpected positive effects, such as providing clarity for dealing with (especially international) claims on accidents and incidents and the fact that it may have caused a small number of Member States to go beyond the scope of the application and expand the coverage of passenger rights.

Section 6 Answers to the evaluation questions

1. Relevance

1.1 Relevance of the objectives

As far as the objectives of the Regulation are concerned, notwithstanding the entry into force of the 2002 Protocol, all stakeholders consulted made it clear that there have been no changes of technical, legal or policy nature that indicate a need to adapt the Regulation. The problems targeted by the Regulation remain relevant today, notably the need to improve information on relevant passenger rights and to harmonise protection of these rights across the EU and across transport modes. As most of the information required to answer this question is available, the level of certainty around the evaluation findings on relevance is high.

The targeted consultation as well as the public consultation along with the case studies into specific incidents, confirmed the relevance of these objectives. All stakeholder groups

consulted agreed on the need to safeguard rights of passengers sufficiently and in a harmonised way, while on the issue of safety the respondents had no strong opinion with responses in the categories "important" and "unimportant" spread quite evenly over the stakeholders groups.[25].

1.2 Relevance of the scope (i.e. international and classes A and B of domestic carriage)

The evaluation revealed split views as to the adequacy of the current scope of the Regulation and the need to expand that to cover all types of domestic carriage. It is clear that stakeholders see the current mandatory scope, applying to international and classes A and B of domestic carriage as relevant to the objectives of the Regulation. However, as far as its extension to all types of domestic carriage is concerned, there is a split between stakeholders who see this as essential to achieve in full the objective of passenger rights protection, and stakeholders who believe that the burden on the relevant part of the sector (i.e. classes C and D and other small domestic operators) would be significant.

An additional element that was revealed in relation to the scope of the Regulation is the lack of clarity, and possibly a misalignment, in the classification of domestic passenger ships for the purposes of the Regulation. While classes A, B, C, and D drawn up in accordance with Directive 2009/45/EC for safety purposes are clear, it is not always clear for operators falling under the scope of the Regulation which class they fall under, and, thus, which rules as regards liability apply to them. The same is even more true for passengers, who lack this information. Furthermore, there are a number of ship categories that are not explicitly included in the scope of the Regulation, because of this linking of the scope to the classification of ships in Article 4 of Directive 2009/45/EC. Notably, these are High Speed Craft, Dynamically Supported Craft and non-steel ships. While these vessels do not fall within the classes A, B, C and D as set out in Directive 2009/45/EC, they still carry a significant volume of passengers (mainly on domestic carriage)[26]. The 2002 Protocol does not exclude these types of ships from its scope, and it is not clear to stakeholders consulted in this evaluation why the Regulation should do so. In practice, some Member States have chosen to apply the Regulation to these categories of ships, not falling under any of the designated classes in Article 4 of Directive 2009/45/EC. This, however, poses a potential concern as regards harmonisation of passenger rights protection across the EU. This effect could not be assessed in the present evaluation, due to the transitional provisions applying to domestic carriage in many Member States.

2. Effectiveness

2.1 Objectives achieved

The evaluation revealed that the four main objectives of the Regulation (outlined in Section 2 above) are attained to a different degree each[27]. The conclusions of the support study on this point are based again more on qualitative evidence produced through stakeholder consultation,

[25] See pp. 47-50 of the Support Study Final report.

[26] See pp. 39-42 of the Support Study Final report.

[27] See Table 6.1 in p. 62 of the Support Study Final report.

rather than any solid quantitative evidence (see Section 4 on Methodology above). Accordingly the level of certainty around the evaluation findings on effectiveness is medium.

The objective of improving passenger rights protection is one where stakeholders agree more that the effect of the Regulation is visibly positive. More specifically, three concrete positive effects are mentioned by stakeholders on this point: (a) the mandatory provision of an advance payment for personal injury or death, (b) higher levels of final compensation, and (c) higher numbers of cases settled in the accidents happening since the date of application of the Regulation. These, however, are coupled also with some findings on difficulties arising in the national context, such as the different rules on succession to determine which persons are entitled to an advance payment, or limited knowledge of the Regulation and the rights established thereunder for the passengers.

As far as levelling the playing field for operators is concerned, an important disclaimer needs to be made as the Regulation still does not apply in the same way in all Member States (i.e. exemptions for classes A and B). As a result, differences in the national legal frameworks applicable to domestic carriage of passengers by sea persist, and only after the end of the transitional period on 31/12/2018 will the full effect of the Regulation on levelling the playing field for all operators will be possible to assess. That said, in international carriage, there is sufficient evidence collected in the evaluation to suggest that operators and insurers are on a more equal footing when dealing with accidents involving passengers at sea.The evaluation could identify only a minor indirect impact on the safety performance of carriers as a result of the Regulation. The majority of stakeholders do not see a clear link between the two, and argue that the requirement for carriers to have insurance under the Regulation does not generally lead to additional safety controls to the ones already established under other pieces of maritime safety legislation.

The objective of balancing the protection of passenger rights across transport modes has been generally attained, in particular with the addition of the advance payment and the information obligations. However, some differences (e.g. limits of liability for carriers) seem to persist between maritime transport and air transport[28], but they are not so significant as to alter the beneficial overall effect of the Regulation on achieving harmonisation across different transport modes.

2.2 Passenger rights protection regardless of area of operation

The effect of the Regulation on protecting passenger rights is more coherent as far as international carriage is concerned. This is because passengers are perceived as not being aware of their rights, they have to wait a long time for compensation which is frequently insufficient and there is an impression that of a lack of legal certainty of victims and carriers. In view of the existing exemptions applicable to domestic carriage, the evaluation revealed an uneven effect of the Regulation to carriage within each Member State. Apart from the exemptions that apply pursuant to Article 11 of the Regulation, there is also a different interpretation of the scope by each Member State concerning the different ships types (e.g. HSC, Dynamically Supported Craft, non-steel vessels). The use of such 'non-classified'

[28] See p. 72 of the Support Study Final report.

vessels for the carriage of passengers in each Member States also varies, and in some Member States these represent a large share of the domestic passenger fleet[29].

Other significant impacts of the Regulation that the evaluation was able to find evidence for are the provision for advance payment and the obligation on the carrier to provide information to passengers on their respective rights at the point of purchase of their tickets, or – at least – at the point of departure of their journey.

In addition, the evaluation has revealed that the inability of smaller operators in domestic carriage to obtain insurance up to the limits of the Regulation is a source of concern for many stakeholders (both Member States and industry)[30]. Consequently, Member States have taken different approaches to tackle this, such as exempting certain types of domestic carriage from the obligation to obtain insurance for some types of risks under the Regulation (e.g. war and terrorism).

Furthermore, there are different national rules applying alongside the Regulation on points not fully covered by the Regulation[31]. While the Regulation still achieves a higher level of harmonisation than was the case before its adoption, these points of discrepancy could potentially negatively affect its effectiveness in the long run.

2.3 Positive or negative unexpected effects

The evaluation has not identified any impediments to the expected benefits. The Regulation does not appear to have produced any unexpected negative impacts to date. The analysis underlying this finding however does cover a period when exemptions were in place. The conclusions may therefore not be transferable to a later period when the Regulation is fully implemented.

There is no evidence that the Regulation has resulted in any increase in passenger fares or insurance premiums for operators. There have been some slight unexpected positive effects, such as providing clarity for dealing with (especially international) claims on accidents and incidents and the fact that it may have caused a small number of Member States to go beyond the scope of the application and expand the coverage of passenger rights.

3. Efficiency: Cost – benefit analysis (proportionality and reasonableness)

The evaluation looked into the different costs and benefits of the Regulation, using proportionality and reasonableness as the main lenses for this analysis. In general, the Regulation was found to be creating significant benefits compared to low costs, bearing in mind the caveat of the limited availability of quantifiable evidence so far.

The costs and benefits that can be attributed to the Regulation are likely to change substantially once the exemptions expire. A future evaluation will have to assess whether the current conclusion on efficiency will still hold. As a result the level of certaintly around the evaluation findings on efficiency is rather low.

[29] See footnote 26.

[30] See pp. 75-76 of the Support Study Final report.

[31] See pp. 76-77 of the Support Study Final report.

That being said, there was little evidence of any insurance premium increases linked to the Regulation, while available documentary evidence of earlier studies carried out on the subject revealed small or hardly any changes in liability cover due to its application[32]. The support study estimated the total insurance impact between zero and € 41 million per year. Based on the literature and interviews, it was concluded that the actual cost increase would probably be at the lower end of this range, also as insurers have indicated strong competition in their market, limiting their possibility to increase premiums. The upper end of this estimate represents some 0.05% of the overall turnover of the passenger shipping sector. The support study used comparative data from other sectors as regards liability to verify this conclusion. Different positions of different carriers, especially obvious between smaller and bigger operators as regards the proportion of the insurance costs to the annual business turnover were identified in the study; however, these should be evaluated at a later stage, several years after the Regulation will be applicable in its full scope.

As far as other compliance and enforcement costs linked to the Regulation are concerned, including costs for Member States' administrations and operators, the support study has shown these to be limited[33]. These include certification costs, administrative burdens and costs of adapting operations which are considered to be only a small fraction of the amount estimated for the cost related to insurance premiums. Additionally, costs for Member States' authorities to issue the relevant certificates are estimated to be on average approximately between € 35,000 and € 70,000 per Member State per year. No impact on ticket fares for passengers have been identified, as they were largely driven by other relevant market conditions (e.g. increasing size of ships, lower fuel prices) in the last few years[34].

The benefits from the application of the Regulation, linked to the four objectives outlined above have been reported as significant, through the different stakeholder consultation actions carried out in the context of this evaluation[35]. More specifically, the higher compensation limits, the reduced uncertainties for passengers as regards their passenger rights protection in the different Member States, and the equal liability conditions for operators in the EU are the highest-ranking benefits. Increased transparency and savings in the context of handling claims are also among the benefits identified in the evaluation. However, the quantification of these benefits was not possible due to lack of sufficient evidence of the reported benefits so far (due to cases falling under the Regulation not having been closed yet). The proportionality and reasonableness analysis was conducted bearing in mind the evidence caveat, but the costs identified in the evaluation process were clearly more limited compared to the benefits of the Regulation, and insignificant when compared to the overall operational costs in the sector.

As regards the possibility of exemption offered by Article 11, the object of this provision is to provide for a transition period allowing Member States and economic operators sufficient time to adapt before the full impact of the Regulation is felt. It could be argued that Member States policy choices optimise the welfare of their societies and so balance costs and benefits the

[32] See pp. 81-84 of the Support Study Final report.

[33] See pp. 86-89 of the Support Study Final report.

[34] See pp. 89-90 of the Support Study Final report.

[35] See pp. 90-94 of the Support Study Final report.

long periods of exemption could be seen as an efficiency tool to prevent a disproportionate shock on the sector.

4. Coherence

4.1 Coherence within EU maritime safety policy and passenger rights policy

While the Regulation's impact on maritime safety was questioned by a few stakeholders in the evaluation, it can be concluded that the Regulation is in line with the objectives of the EU maritime safety policy. As part of the Third Maritime Safety Legislative Package the Regulation ensures greater accountability and responsible behaviour on the part of maritime operators.

As far as passenger rights policy is concerned, the Regulation is complementary to Regulation 1177/2010, which establishes the more general passenger rights framework for waterborne transport. It is coherent with that framework, in particular through its information and advance payment requirements, as well as the special provisions on mobility equipment for persons with reduced mobility. Some differences among different transport modes can still be noted, but are limited and do not pose major obstacles in the harmonisation of protection across transport modes.[36] One theoretical element, so far, that could raise some concern regarding the equal level of protection of passengers is the interaction of the Regulation with the Package Travel Directive[37] in the case of cruises and other maritime transport combining accommodation with carriage[38] as regards for example different time-bar for actions under each instrument. However only experience with the application of the Regulation in parallel with the new Package Travel Directive, taking effect in July 2018, will offer evidence to address this point of possible concern.

4.2 Coherence with EU Transport Policy and Commission's 10 Policy Priorities

The evaluation concluded that the Regulation is generally coherent with EU Transport Policy, as that was laid down in the 2011 White Paper on Transport, in particular with the passenger rights policy objectives[39]. The connection of the Regulation with the 10 policy priorities of this Commission[40] is not obvious to the majority of stakeholders consulted in this evaluation.

Some stakeholders argued that there is a possible discrepancy between the Regulation and the priority to promote growth and jobs, due to the additional administrative requirements the Regulation imposes on operators. However, as the administrative costs of the Regulation are minimal, this view could not be substantiated with sufficient evidence. On the other hand, the

[36] See pp. 98-103 and 106-108 of the Support Study Final report.

[37] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ L326, 11.12.2015, p.1)

[38] See pp. 103-105 of the Support Study Final report.

[39] See pp. 108-110 of the Support Study Final report.

[40] See https://ec.europa.eu/priorities/index_en

Regulation's objectives are streamlined with the fourth and the seventh priorities, on a deeper and fairer internal market and a common framework to uphold justice and fundamental rights across the EU. As most information required to assess coherence is available the level of certainty around the evaluation findings on coherence is high.

4.3 Internal coherence

No issues with regard to internal coherence within the Regulation were identified.

5. EU added value compared to international and national rules

The main added value of the Regulation compared to the Protocol of 2002 and the existing national rules on passenger rights protection is harmonisation across the EU and across transport modes (i.e. advance payment, right to information, mobility equipment), and increased levels of compensation in case of accidents at sea[41]. These objectives, in particular harmonisation, could not have been achieved at a national alone, which indicates that the Regulation is in line with the principle of subsidiarity. As most information required to assess EU added value is available the level of certainty around the evaluation findings on coherence is high.

6. Complementarity with Athens Convention and national regimes

The element of complementarity of the Regulation with the Athens Convention as amended by the 2002 Protocol was examined in the light of the subsequent entry into force of the Protocol. At the time of its adoption, the Regulation supposed the entry into force of the Protocol prior to 2012, which, however, did not materialise. In practice, the evaluation found no evidence of difficulties or inconsistencies arising as a result of this different timeline.

As far as national law is concerned, the support study found the element of complementarity to be present in the adoption of national auxiliary legislation in several Member States in order to enable the application of the Regulation's requirements[42]. On this point, it is worth bearing in mind the elements raised in relation to question 2.2 above, as regards the different national rules that may affect in some respects the effectiveness of the Regulation in harmonising passenger rights protection.

Economic, Social and Environmental Impacts

The cost-benefit analysis in the context of the Evaluation has looked into the economic impact of the Regulation and has found no evidence to support any macro-economic effect thereof, while little evidence could be identified as to its micro-economic effect (see question on 'Efficiency' above). It is important to take into account in this regard, the incomplete application of the Regulation in its full scope, in particular as regards domestic carriage, due to the opt-outs. An assessment of the Regulation's economic impact should be undertaken after the transitional period has ended, and the Regulation has applied in its full scope for a reasonable time, i.e. after 2019 (31/12/2018 is the date of expiry of the last exemptions for class B ships).

[41] See pp. 113-126 of the Support Study Final report.

[42] See p. 132 of the Support Study Final report.

There is no evidence arising in the context of this evaluation to suggest any social or environmental impacts of the Regulation.

Section 7 Conclusions

The Regulation is a relatively new piece of EU legislation, coupled also with a recent international development (Protocol of 2002). As such, the evaluation has found positive results on the relevance of its objectives today.

The most important findings of this evaluation are related to the effectiveness of the Regulation, even though it could not be fully assessed due to the incomplete application of its mandatory scope. This is a result of the transitional provisions applicable in several Member States, including States representing the largest share of passenger volumes and relevant fleet. Bearing in mind this limitation, the evaluation has relied on an extensive consultation of stakeholders and the general public on the different elements of the Regulation. The results of this consultation were sufficient to draw a positive conclusion as regards the effectiveness of the Regulation, but have also identified the need for further consideration of the following elements.

The appropriateness of the scope of the Regulation, which is key to its effectiveness, needs to be reassessed, in the context of a possible future impact assessment, in accordance with Articles 1(3) and 9(1) thereof, at a later stage. That cannot take place until sufficient time has elapsed after the full mandatory scope of the Regulation has become applicable to all maritime EU Member States. The exemptions that apply to some types of domestic carriage (namely for class B until 31/12/2018) have to end, and sufficient time allowed thereafter for relevant evidence of implementation to be produced. The nature of cases involving liability of carriers arising from accidents at sea, followed in many cases by lengthy legal proceedings, also needs to be taken into consideration when deciding on how, whether and when to carry out any future evaluation or impact assessment on the subject of this Regulation.

As far as other existing legislation is concerned, the Regulation is coherent and adds useful elements to the existing instruments, while further experience with its application can clarify its interaction with the Package Travel Directive and the 2002 Protocol, as that forms part of EU law.

In the absence of any specific reporting obligations for Member States arising from the text of the Regulation, the Commission will rely in the future on voluntary reporting of compliance with the Regulation by Member States' authorities, as well as any complaints received by individuals or entities on its application.

Annexes to the final report

Annex 1: **Procedural information concerning the process to prepare the evaluation**

1. *Identification of the lead DG; Agenda planning/Work Programme references*

- DG MOVE is the lead DG
- Agenda Planning Reference 2015/MOVE/048:

http://ec.europa.eu/smart-regulation/roadmaps/docs/2015_move_048_evaluation_liability_of_passenger_carriers_by_sea.pdf

2. *Organisation and timing*

- The Evaluation began in September 2015 with the first meeting of the Inter-Service Steering Group (ISG), which discussed the draft Roadmap and Consultation Strategy for this evaluation. The Roadmap was published for public feedback on 28 September 2015. As no feedback was received in four weeks, the Commission proceeded with the call for expression of interest for the support study, which was assigned to ECORYS NL (consortium) through Specific Contract No. MOVE/D2/2015-585, under Framework Contract No. MOVE/A3/119-2013.
- The contractor started work on the support study in February 2016 and delivered the final report, after all comments by the Commission had been taken on board, in January 2017.
- The ISG held another 3 meetings after the first meeting in September 2015, on the different steps of the evaluation process, including on the Intermediate Report of the support study, the draft final report of the support study, and on the draft SWD by the Commission. The Commission Services participating in the ISG are: Secretariat-General, DG Justice and Consumers, DG Financial Stability, Financial Services and Capital Markets Union, DG Maritime Affairs and Fisheries, DG Internal Market, Industry, Entrepreneurship and SMEs, and the European Maritime Safety Agency (EMSA).

3. *Evidence used*

The evaluation relies mostly on the "Support study to the Evaluation of Regulation (EC) 392/2009" conducted by an external consultant.[43]

[43] https://bookshop.europa.eu/en/support-study-to-the-evaluation-of-regulation-ec-392-2009-pbMI0417106/

Annex 2: Synopsis Report

Consultation activities

1.1 Methodology

1.1.1 Survey

Participation to the survey was open to all interested stakeholders. An invitation to participate to the survey was send to more than 160 stakeholders from all relevant stakeholder groups. The questionnaire that was put forward comprised of 53 questions. To avoid stakeholder fatigue and boost participation, specific questions were addressed to only the most relevant stakeholders. Aiming for a wider and more balanced participation (between stakeholder groups), the survey was expanded from 4 to 9 weeks (20 May - 29 July 2016). Additionally reminder e-mails were sent and specific channels of promotion were utilized including identification of stakeholders via:

- Participants to the exploratory and in-depth interviews;
- Stakeholder association members (i.e. CLIA, ECSA, Interferry, IGPANDI etc.);
- Professional networks of the study team;
- Participants in the Expert Group meeting;
- The Open Public Consultation; and
- Consultation with the European Commission.

Eventually, the survey starting page recorded nearly 400 views. Input was collected from 82 respondents that filled in the survey. Stakeholder group representation varied with EU Member States policy makers being the most represented group (26) followed by inspectorate authorities, ship owners, insurers and passengers/victims. The geographical spread of the respondents reveals North Sea stakeholders as the most active. However Mediterranean and Baltic Sea countries appear also high in the list ensuring the results represent a diverse set of stakeholders.

1.1.2 Interviews

In-depth interviews were introduced to collect more detailed replies and inquire for inputs and views of more sensitive nature (i.e. timing and level of compensation, case settlements etc.). This tool proved especially useful in receiving elaborate views on the functioning of the Regulation and the strategy of various actors. Anonymising the responses was offered to ensure openness in responses. Specific stakeholders willing to provide input were identified in consultation with the Commission, EU-level and national stakeholder associations and via the study team's professional networks. A total of 43 in depth stakeholder consultations are classified as exploratory interviews (6), targeted and case study interviews (35), and written input received from stakeholders (2).

Exploratory interviews were conducted to build up an initial understanding of the application of the Regulation and further shape the approach to the study. The stakeholders

selected were an academic, insurers' and shipowners' representative organisations and lawyers representing passengers.

Targeted interviews aimed at collecting in-depth input from stakeholders on the functioning of the Regulation. These were conducted in person or by phone. Interviewees were provided with an interview briefing note of the evaluation exercise purpose and scope. A semi-structured format was adopted and stakeholders encouraged to elaborate on the topics relevant to them. The interviews relevant to the case studies focused on the implementation of the specific Regulation application. Two stakeholders (IMO and FENVAC) respond to the interview request with written input.

EU Member States (both policy-makers and inspectorates) make up the most represented stakeholder group (12). The participation of ship owners, insurers, passengers and academics was balanced with 5 interviews for each. Lawyer interviews (9) contributed to further representation of passengers and ship owners as clients.

1.1.3 Open Public Consultation

The Open Public Consultation (OPC) for Regulation 392/2009 was launched by the Commission and the online questionnaire remained open from 29 July to 31 October 2016. Both evaluative and impact-assessment-relevant questions were put forward to avoid two separate processes. 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 and v) general. Respondent were given also the option to upload documents they considered relevant.

The OPC questionnaire was promoted via the European Commission Open Public Consultations website and the DG MOVE website. The study team also promoted the OPC questionnaire to the stakeholder contacts made over the duration of this study. In total, 16 responses were received with Member States authorities represented 6 times (4 policy making and 2 inspectorate authorities). Ship owner and passenger representation followed with 3 responses for each. Finally, insurers, law firms, academics and other stakeholders put forward 1 response each.

1.2 Stakeholder groups

In the course of this study 8 main stakeholder groups have been identified and consulted:

1. EU Member States as flag States and as port States;

   All 28 EU Member States, in their capacity of implementing and enforcing authorities. In most countries this was the national shipping inspectorates or similar bodies. Flag state authorities are consulted in their capacity to issue certificates according to the Regulation. Port state authorities respectively are relevant as they enforce the Regulation through inspections. Further, national ministries as relevant policy-making bodies in the field of passenger rights and maritime transport safety are also consulted.

2. Ship owners engaged in passenger carriage in the different types of carriage;

   Ship owners engaged in either cruise or ferry operations. This stakeholder group encompasses interests with a diverse approach to the Regulation. Carriers face different impacts based on their size (small versus large) and their market segment (cruise versus

ferry), but also due to Member States of operation and flag registry (deferred versus expanded Regulation application).

3. Passengers /victims associations including consumer protection organisations and tour operators;

   Passengers are a group impacted by the Regulation's aim to directly alter the status in the protection of their rights. They are interested in securing a high level of passenger rights and are called to pay for increases in passenger fares due to higher insurance premiums. As intermediaries between the passengers and carriers, travel agents and tour operators are usually the first party contacted for complaints. Under Directive 90/314/EEC tour operators may be (joint and severally) liable to the passenger. This group (may) play a key role in the dissemination of information to passengers. Additionally, in some cases, organisations have been established to defend the rights of groups of passengers related to individual accidents. Such groups are significantly affected by the provisions of the Regulation.

4. Insurers providing cover for non-war risks and for war risks:

   Insurers are called to underwrite the vessels of carriers according to the requirements of the Regulation. We distinguish umbrella organisations (in particular the International Group of P&I clubs) as well as individual insurance companies.

5. Third (non-EU) States whose ships perform carriage falling under the Regulation:

   Non-EU flag states with vessels calling EU ports in their registries need to provide with relevant certificates according to the Regulation (alternatively EU Member States need to issue these certificate).

6. Law firms representing clients for claims under the Regulation;

   Law firms consider the provisions of the Regulation in protecting their client rights in case of maritime accidents. Both (maritime) law associations and individual law firms are consulted.

7. Academics researching/publishing on the subject of the Regulation and the Convention;

   Academics are not directly impacted, however they study (and should therefore be knowledgeable about) the Regulation's impacts.

8. Other actors involved in the carriage of passengers by sea, who can be involved in the application of the Regulation, such as tour operators and crew.

   Other actors relevant to the Regulation include EMSA which records marine casualties, the International Chamber of Shipping (ICS), the International Maritime Organisation (IMO), as regards the relation with the Athens Conventions/PAL and the European consumer organisation (BEUC) and national consumer organisations

3.3 Results of consultation activities

3.3.1 Relevance

- **Questions put forward**

Stakeholders were asked to assess the relevance of the three main problems identified during the formulation of the Regulation. These problems, according to the intervention logic are:

1. Rights of passengers are not sufficiently safeguarded
2. No level playing field for carriers in the EU
3. Potential risks to the safety level of passenger carriage by sea

Stakeholders were asked to identify developments since the introduction of the Regulation affecting its implementation. Another question concerned the sufficiency of the current scope of application to achieve the Regulation's objectives. They were also asked for their views on the importance of the stated problems for vessel in classes C and D?

- **Stakeholder responses**

Regarding the problem driver of adequate protection of passenger rights, the majority of stakeholders participating in the survey indicated they had no strong opinion over the relevance of the problem. Stakeholders involved in case studies acknowledged the importance of the problem. Survey responses of passengers and victims identify the problem as important. On the other hand, ship owners and insurers seem to be less acknowledging with only 2 out of 14 considering the problem as relevant.

Positive respondents identified the following aspects as important or very important contributors to the problem:

- Passengers not being aware of their rights: 73%;
- Long time for receiving compensation: 66%;
- Insufficient compensation: 66%;
- Lack of legal certainty of victims and carriers: 68%;
- Carriers are not liable for loss of mobility equipment of Passengers with Reduced Mobility: 37%.

The first four aspects were also confirmed by the stakeholders participating in the interviews and especially from passengers and lawyers involved in the case studies. Policy makers and inspectorates identified the same aspects in larger numbers (over 80%) as important. When inquired on the problem driver of safeguarding a level playing field, the majority of the survey respondents (32 out of 58) stated that they had no strong opinion. However, the majority of the rest (21 out of 26), considered it an important or very important problem. This finding was supported by interview findings. The OPC responses also indicated that industry associations (ECSA and CLIA) consider this a significant issue.

Positive respondents identified the following aspects as important or very important contributors to the problem:

- Right for compensation (standards) differ in EU Member States: 61%;

- Lack of legal certainty for passengers and carriers: 70%;

- Unlimited liability for carriers *(including terrorism risks) cannot be combined with mandatory insurance: 66%.

The first two aspects were also recognised as important problems during the interviews.

Survey participants identifying the problem driver of "potential risks to the safety level of passenger carriage by sea" as important and those identifying it as not important were split roughly equally. The only group clearly identifying the problem as important were passengers. Interviewees suggested that this was not a problem directly linked to this Regulation.

The vast majority of survey participants (94.3%) identify no relevant developments (e.g. market, societal etc.) impacting on the application of the Regulation, a view shared in interviews.

Member States' authorities declare that coverage of international and Class A and B domestic ships is an appropriate scope for the Regulation. This is partly confirmed by the survey. Out of 50 respondents, 34% indicate that the Regulation can reach its objectives in its current scope while only 12% doubt this. The rest regard the statement as "partially true" (26%) or "don't know" (28%). Survey respondents considering the current Regulation scope not appropriate or partially appropriate include not only Member State authorities, but also ship owners, insurers, academics and passengers. The majority of OPC respondents were not in favour of modifying the scope of the current Regulation.

Regarding relevance of the defined problems for Class C and D vessels, the majority of survey respondents have no strong opinion. Combining the rest; responses of important and very important vs unimportant and very unimportant, the following pattern has been observed:

- Passenger rights: combined important (30%) outscores combined unimportant (22%);

- Level playing field: combined important (26%) outscores combined unimportant (18%);

- Safety of passengers: combined unimportant (18%) outscores combined important (28%).

Similar to the respective question concerning the overall relevance of these objectives, passenger respondents recognise the same problems for classes C and D vessels. On the other end, ship owners and insurers recognise the importance of these problems for class C and D vessels the least. Member States that had expanded the application of the Regulation to C and D vessel classes (e.g. Denmark and Sweden) suggest that they opted for this because they viewed that the level of passenger rights protection should not be dependent upon vessel class. It is also suggested that an expansion of the Regulation scope should come with an effort to lighten the administrative burden and secure the availability of insurance cover for the smaller carriers. OPC respondents consider an expansion of the scope to all domestic carriage not appropriate.

- **Conclusion**

Stakeholders at large identify the problems that the Regulation aims to deal with as relevant, protection of passenger rights being the most important. On average the same problems are considered relevant for class C and D vessels; however there is some hesitation to alter the Regulation's scope of application. Stakeholders also identify no developments (e.g. market, economy etc.) since the introduction of the Regulation that can have an impact on the application of the Regulation.

3.3.2 Effectiveness

- **Questions put forward**

When evaluating the Effectiveness of the Regulation, stakeholders participating in the survey were asked to assess the performance of the Regulation vis-á-vis its declared objectives:

1. Setting up and complementing a balanced framework of passengers rights;
2. Incentivising increases in the safety and security performance of sea passenger transport operators;
3. Creating a level playing field for operators promoting best practices and responsible behaviour;
4. Ensuring that passenger rights are protected in the event of an accident.

Stakeholders were asked their understanding of the Regulation's performance towards reducing the duration of legal procedures, increasing the settlement of cases out of court and increasing the level of information provided to passengers. These questions were put forward especially in the context of the case studies as they provide a practical basis for such assessments.

Additional questions aimed to assess the functioning of the Regulation relating to the existence, timing and level of the advanced payments and compensations were asked.

Member States authorities, ship owners and insurers were also asked if the Regulation resulted in:

- Effects on the operation of their organisation;
- implementing actions to improve safety and security;
- different ways of assessing vessel safety and security standards.

Another question put forward concerned the impact on the number of complaints received distinguishing complaints for the different rights protected by the Regulation.

- **Stakeholder responses**

Survey participants, mostly consider the Regulation to have had positive performance concerning:

1. Setting up a balancing framework of passenger rights: positive views (57%) clearly outnumber negative ones (9%);

2. Creating a level playing field: most indicated a positive impact (57%) versus just one negative response (2%);

3. Ensuring passenger rights protection: Positive opinions (63%), no negative opinions (0%);

4. Incentivising safety and security performance: Positive views (35%) were challenged by a considerable number of stakeholders (41%) considering the Regulation had no effect.

The views of EU Member States policy-maker authorities were more positive than average for the first three issues (66%, 63% and 73% respectively). The OPC results reinforced the view that the Regulation has been effective in levelling the playing field and strengthening passenger rights protection.

Interviewed stakeholders supported the view of positive impacts of the Regulation on the first three objectives. A number of stakeholders[44] stated in particular that the Regulation strengthened the negotiation power of accident victims. Passenger carriers, inspectorate authorities, insurers and lawyers[45] also suggested that taking a step towards harmonising the EU legal framework is positive despite national differences still hampering the full exploitation of this benefit. At the same time the performance of the Regulation towards achieving the fourth objective was challenged by different groups, including insurers, ship owners, claim lawyers and EU Member States[46], who considered this aspect to be mainly dealt with by other pieces of legislation.

The majority of stakeholders participating in the survey had no clear view of the Regulation's impact on the duration of (48%) and settling of (41%) legal procedures concerning passenger claims. However, interviewed insurers and case study stakeholders view is that the clarity provided by the Regulation facilitates settlements.

Survey respondents suggested that the quantity and quality of information provided to passengers concerning their rights has improved as a result of the Regulation (41%). This view was however not shared by lawyers dealing with accident cases studies. They stated that in many cases lack of knowledge was the cause of not achieving better passenger protection. An additional positive effect of the Regulation, cited by Member States authorities[47], was the opportunity provided to review and revise the national legal frameworks.

[44] The Swedish Ministry of Justice, the Danish Ministry of Transport, Raets Marine, Vista tour operator and Norman Atlantic victim lawyer.

[45] Interviews CLIA, Greek lawyer, Greek NEB, HA Group

[46] UK Department for Transport, Swedish Ministry of Transport, Danish Ministry of Transport, P&I service provider, ship-owner association, claims lawyer and a national Maritime Law association

[47] Interviews with Danish Maritime Authority and a member of the Polish Codification Commission for Maritime Law

Most survey stakeholders were not aware of the impact of the Regulation on the existence of or time required to receive an advanced payment or the time needed to receive compensation (43%) or the level of compensation provided in case of accidents (35%). These findings were confirmed in most of the interviews. However, while survey respondents stated an awareness of the impact they considered the Regulation to have either a positive or neutral effect with the largest portion claiming a positive impact on the level of compensation (33%). These views were in accordance with what was confirmed in interviews, especially with actors involved in the case studies. The direct provision of advanced payments when requested was often reported although other lawyers suggest that awareness of the right to advance payment was not always the case.

The majority of survey participants indicated the Regulation had no impact on their organisation's operation (80%), on actions to improve safety and security (85%) or on adopting a different way of assessing vessel safety and security (90%). No ship owners declared an impact of the Regulation on any of the questions above. The main identified impact of the Regulation on day-to-day operations was that of requiring insurance covers (ship owners and insurers) or relevant certificates (Member States authorities and ship owners). Only a very small number of stakeholders identified the Regulation as having an impact on the number of complaints filed (9%). None of the Member States authorities, ship owners or insurers agreed on such an impact. Similarly none of the interviewees[48] identified an impact on the number of complaints.

- **Conclusion**

The majority of responses considered the Regulation to have at least partially produced improvements in improving passenger rights protection; creating a balanced framework of passenger rights and levelling the playing field. Respondents were more reluctant to acknowledge a direct impact on the safety and security performance of operators. An undisputable positive impact is the harmonised regulatory EU framework.

3.3.3 Efficiency

- **Questions put forward**

In order to assess the efficiency performance of the Regulation questions focussed on the costs that were induced due to the adoption of the Regulation.

Stakeholders were asked about the impact of the Regulation on insurance premiums; ship owners were also asked how challenging it has been to accommodate such impacts. Another question addressed the impact of the Regulation's adoption on passenger fares.

Finally, Member States authorities were questioned on the administrative burden created to them.

Stakeholder responses

None of the ship owners that responded to survey indicated having perceived an increase in insurance premiums. Nevertheless insurers and academics surveyed indicated some increases.

[48] UK Department for Transport, UK Maritime Coast Agency, Greek National Enforcement Body, Italian Ministry of Transport and the Danish Ministry of Transport.

This contradiction might be due to reference to different Member States or passenger carriage market segment. Insurance industry stakeholders interviewed also suggested there mostly have been no increases in the insurance premiums. This statement was confirmed by the cruise operator representative association[49]. On the other hand, one ship owner respondent to the OPC suggested a significant increase as a consequence of the Regulation.

A number of interviewed stakeholders representing Member States authorities across the EU[50] expressed concerns regarding the insurability of smaller vessel operators in light of the limits to liability brought on by the Regulation. ECSA expressed the same concerns in the OPC input provided.

Only 3 out of 34 survey participants responded that the Regulation resulted in an increase to passenger fares. The lack of impact on passenger fares was confirmed in ship owners and Member States authorities' interviews and OPC responses.

18 Member States authorities responded to the survey question related to the impact of the Regulation on their resources indicating that it did not cost them more than 1 FTE in most cases. The coverage of this burden by certificate fees varied significantly between Member States.

- **Conclusion**

There are no coherent views suggesting a significant increase in insurance premiums. Stakeholders mostly agree that no impact has been observed in passenger fares. Member States indicated an increase in the administrative burden but in most cases this is considered manageable.

3.3.4 Coherence

- **Questions put forward**

Stakeholders were inquired regarding the Regulation's coherence with the EU maritime safety and passenger rights policies and, with the Union's approach to transport operators' liability.

- **Stakeholder responses**

15 survey respondents (43%) indicated they consider the Regulation is entirely in line with the EU policies on maritime safety. One respondent indicated that the Regulation partially conflicts with other EU policies in maritime safety[51], while the remaining 19 respondents indicated that they do not know whether or not the Regulation is in line these policies.

No actors, mentioned problems between the Regulation and other EU maritime safety acts. Although most stakeholders indicate that differences with other modes have decreased, they also indicate that the coherence between modes is not yet fully achieved. Supporting this

[49] CLIA

[50] Similar preoccupations were identified in the interviews with at least the French, UK, Danish and Polish authorities.

[51] Without specifying how Regulation 392/2009 conflicts with the other maritime policies.

statement is the fact that only 16% of survey respondents suggested that the Regulation is in line with operator's liability provisions in other modes.

Most survey respondents (74%) were not able to say whether the Regulation is coherent with the 2011 White paper on Transport. The remaining 26% indicated it is fully or partially in line[52]. When asked whether they considered the Regulation and the ten EU priority policy areas interlinked, seven respondents to the survey (20%) answered that in their opinion the Regulation is entirely in line with the ten priority policy. Two (3%) indicated they it is partially conflicting, while the remaining 26 (74%) indicated they do not know.

- **Conclusion**

Opinions collected largely indicate that the Regulation is in line with EU policies in maritime transport safety and passenger rights. Also no significant impact of the parallel application with the Athens Convention has been reported.

3.3.5 EU added value

- **Questions put forward**

Stakeholders were asked to assess the gaps they perceive the Regulation filled in, including:

- Applicability of international liability rules to domestic shipping;

- Protection of people with reduced mobility;

- Provision of advance payment;

- Information obligation on the side of the operator;

- Introduction of the Athens Protocol 2002 standards in EU legislation;

Also they were asked if they considered regulating the liability regime for passenger transport at an EU-level to be useful in terms of improving passenger rights protection compared to what would be achievable by Member States at a national or regional level.

- **Stakeholder responses**

The survey provided a mixed view on whether the Regulation has managed to fill in gaps in national regulation. Only 8 respondents (24%) indicated that this has been achieved. These respondents originate from countries with varying scope of application of the Regulation. Another 12 respondents (36%) indicated it has been only partially or not at all effective.

The results of the stakeholder survey provide a diverse picture whether the explicit inclusion of mobility equipment in the definition of the luggage brings added value. 10 survey respondents (30%) indicated that this objective is fulfilled while another 10 indicated it is partially or not at all fulfilled. The remaining 13 (39%) indicated inability to answer the

[52] The stakeholders indicating that the Regulation is only partially in line with the 2011 White Paper on Transport did not provide further details supporting their opinion.

question. The interviews did not contribute as the interviewees proved unable to provide insight on this topic.

Regarding advanced payments, the survey provided also a mixed picture. 16 respondents (48%) indicated this objective is either fully or partially fulfilled. The remaining 17 indicated unable to answer the question.

With regard to the objective of providing information to passengers, the survey responses are mixed. 13 respondents (39%) indicate this objective to be fully filled. Another 8 respondents (24%) indicated that the objective is only partially or not at all fulfilled. The remaining 12 respondents (36%) did not express an opinion. Several interviewees stated they are not able to assess whether this objective has been met by the provisions of the Regulation alone.

33 survey respondents[53] found that the Regulation added value in introducing the Athens Protocol 2002 standards in EU legislation. 61% (20 responses) answered that this objective is fully fulfilled. One respondent indicated this to be only partially fulfilled, while 2 respondents indicated this is not fulfilled at all. The remaining 30% (10 respondents) indicated they do not know if this has created EU added value. Interviewees from diverse stakeholder groups[54] mentioned the main advantage for them is that the Liability Regulation brought into force the Athens Protocol.

Nearly all stakeholders involved in the OPC identified (at least some) added value at taking action at an EU-level due to the international dimension of the passenger transport industry.

- **Conclusion**

The views of stakeholders regarding the added value of the Regulation differ. The most agreed on aspect is the Regulation's impact in bringing into force the Athens Protocol. Overall positive views have been expressed for the impact on the securing and timely provision of advanced payments and the improvement of the level of the provision of passenger rights information.

3.3.6 Complementarity

- **Questions put forward**

The stakeholders were asked whether they experienced problems with the simultaneous application of the Regulation and the Athens Convention. Participants to the survey were also asked to discuss the advantages of the Regulation in comparison to the previously applied system of international and national legislation.

- **Stakeholder responses**

None of the 21 stakeholders experienced or was aware of existing problems with the simultaneous application of the Regulation and the Athens Convention.

[53] The question was asked to both Member State policy makers and inspectorates.

[54] IGPANDI, ICS, FENVAC, the Danish Ministry of Transport and the Swedish Ministry of Justice

The main advantages stakeholders recognised to the introduction of the Regulation can be divided into two main categories. On the one hand, the introduction of uniform regulation throughout the EU, harmonisation of the legal system and the creation of an EU-wide level playing field. On the other hand, the availability of financial guarantees, better consumer /passenger protection and the introduction of common interpretation and guidance (on how to deal with claims) are highly valued. These views were confirmed during the interviews held.

Although most stakeholders did not indicate specific problems with having a three-layered legal system in place (national, European and international), two stakeholders explicitly mentioned problems. The French Ministry of Environment, responsible for the implementation of the Liability Regulation, addressed the issue that the definition of shipping incident under French law is wider than the one used in the Regulation. Also, Italian stakeholders indicated that in Italy no secondary legislation has been adopted to clarify provisions such as attribution of payments.

- **Conclusion**

There has been no reporting of problems caused by the parallel application of the Regulation alongside the Athens Convention or national frameworks although a minor concern has arisen due to the need to harmonise definitions between the national framework and the Regulation. Stakeholders also identified advantages in the creation of a harmonised EU legal framework.