

IMPLEMENTING the 2002 protocol of the Athens Convention on passenger liability in European Union law may prove problematic because some of its provisions are "vague and open to misinterpretation", warns Dr Baris Soyer of the Institute of Shipping and Trade Law at Swansea University, writes Sandra Speares.

Any obscurity surrounding provisions defining the scope of the Athens Convention could hinder the uniformity of the passenger liability regime within the EU, he told delegates at a Swansea University colloquium on maritime legal liabilities.

Dr Soyer said there was also a potential conflict between the Athens Convention and the 1992 package regulations in force in the UK. "Bearing in mind that Package Regulations are designed to implement a European Commission directive, it is possible that similar interpretation difficulties might arise in the other EU jurisdictions."

He suggested that provided any ambiguities were correctly identified, the proposed EU regulation on passenger liability could be modified to clarify the scope of the Athens Convention.

While the meaning of 'ship' and 'contract of carriage' played a crucial role in defining the scope of the Athens regime, "a certain degree of controversy and ambiguity surrounds the definitions provided in the convention which might cause inconsistent interpretations in various jurisdictions", Dr Soyer said.

Under the convention, a ship is defined as a "sea-going vessel, excluding an air-cushion vehicle", Dr Soyer explained. While the distinction between sea-going and non-sea-going may not be of much use in the EU, as the regulation is designed to cover inland waterways as well, in other states adopting the Athens convention, "valuable court time might be required to determine the meaning of sea-going, which has not been clarified in the convention itself".

The definition of 'ship' could vary from jurisdiction to jurisdiction within the EU, and Dr Soyer said that one way of solving this problem would be to have a comprehensive definition of the word 'ship'.

Under the terms of the convention, a contract of carriage is defined as "a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage as the case may be".

The definition of carrier contained in the convention in relation to the contract of carriage is more loosely worded and "open to deliberation", Dr Soyer said. In the same way, the definition of 'passenger' is "potentially capable of causing a reasonable degree of uncertainty".

Problems could also arise over a contract of carriage in cases where someone receives a free ticket as part of a promotion or where a vessel is chartered by an individual for his guests.

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