

# INTERNATIONAL MARITIME AND TRANSPORT LAW COURSE

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AND RECENT DEVELOPMENTS OF MARITIME LAW  
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INTEGRATION OF INTERNATIONAL TRANSPORT LAW IN THE EU LAW:  
THE ROLE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

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# **SUMMARY**

- **General Aspects**
- **EU Internal and External Competence Regime**
- **Transport Sector**
- **EU Passenger Transport Regulations**
- **Pre-emption Procedure: Positive and Negative Aspects**
- **Court of Justice of the European Union: Waltz Case**

## **GENERAL ASPECTS**

- **Interaction between the international transport Law and the European Law**
- **Legal sources of International Trade Law**
- **EU Member States > Contracting States**
- **Implementation of international convention in the EU legal order**
- **Implementation Procedure/Mechanism**
- **Court of Justice of the European Union**

# EU COMPETENCES

## Art. 5 TEU

### Principle of Conferral

The limits of Union competences are governed by the principle of conferral

### European Union

- has only the competences conferred on it by the Treaties
- may only act within the limits of the competences conferred upon it by the EU Member States in the Treaties to attain the objectives provided therein

### EU Member States

- competences not conferred upon the EU in the Treaties remain with the EU Member States

### Division of competences between the EU and EU Member States

### Main Categories of EU competences:

- Exclusive (Art. 3 TFEU)
- Shared (Art. 4 TFEU)
- Supporting (Art. 6 TFEU)

## EU COMPETENCES (1/5)

### Division of competences between the EU and EU Member States

#### Main Categories of EU competences:

- Exclusive - Art. 3 TFEU (customs union; establishing of the competition rules necessary for the functioning of the internal market; monetary policy, conservation of marine biological resources under the common fisheries policy; common commercial policy). **The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope**
- Shared - Art. 4 TFEU (where the Treaties confer on it a competence which does not relate to the areas referred to in Art. 3 and 6 TFEU)
- Supporting - Art. 6 TFEU (competences to carry out actions to support, coordinate or supplement the actions of the Member States, example tourism)

## EU COMPETENCES (2/5)

- Article 2 TFEU

- - Art. 2.2

EU and EU Member States are able to legislate and adopt legally binding acts

EU Member States exercise their own competence where the EU does not exercise, or has decided not to exercise, its own competence.

- Art. 4 TFEU

- - Art. 4.1

EU shares competence with the EU Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Exclusive and Supporting Competences

- - Art. 4.2

Shared competence between the EU and EU countries applies in:

- Transport (let. g)
- Trans-European Network (let. h)

## **EU COMPETENCES (3/5)**

### **EU EXTERNAL COMPETENCES**

**Distribution of competences between the EU and Member States also applies at international level**

#### **EU has legal personality**

**EU is a subject of International Law: capable of negotiating and concluding international agreements on its own behalf in fields where it has a competence conferred on it by the treaties.**

**Where the EU negotiates and concludes an international agreement, it has either exclusive competence or competence shared with EU Member States**

**Where it has exclusive competence, the EU alone has the power to negotiate and conclude the agreement**

## EU COMPETENCES (4/5)

### INTERNATIONAL AGREEMENTS: CONVENTIONS AND TREATIES

#### Art. 3.2 TFEU

European Union “**shall also have exclusive competence for the conclusion of an international agreement**” when

- its conclusion is provided for in a EU legislative act
- is necessary to enable the Union to exercise its internal competence
- its conclusion may affect common rules or alter their scope



## **EU COMPETENCES (5/5)**

### **INTERNATIONAL AGREEMENTS: CONVENTIONS AND TREATIES**

#### **Art. 3.2 TFEU**

**International agreements with non-EU Member States or with International Organisations:**

- **after having been negotiated and signed, and depending on the subject matter concerned, they may require ratification by an act of secondary legislation**
- **not the result of a legislative procedure or the sole will of an institution**
- **integral part of EU law**
- **have a legal force superior to unilateral secondary acts (*sui generis* category)**
- **treaties under public international law**
- **generate rights and obligations for the contracting parties**
- **must be applied throughout the EU**

## MIXED AGREEMENTS (1/4)

If the subject-matter of an agreement does not fall under the exclusive competence of the EU, Member States also have to sign the agreement, named “mixed agreements”

Where EU competence is shared with Member States, **the agreement is concluded both by the EU and by Member States**

**EU Member States** must give their consent to the mixed agreement

Mixed agreements may also require that an internal EU act is adopted to share out the obligations between the EU Member States and the EU

## PARTIAL OR INCOMPLETE MIXITY

Mixed agreements can be concluded by the EU and only some EU Member States

## MIXED AGREEMENTS (2/4)

### Court of Justice of the European Union

*“Where it is apparent that the subject-matter of an agreement or convention falls partly within the competence of the [European Union] and partly within that of its Member States, it is essential to ensure close cooperation between the Member States and the Community institutions, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into. That obligation to cooperate flows from the requirement of unity in the international representation of the [European Union]” (European Commission v. Kingdom of Sweden (Case C-246/07 and Opinion 2/15 of 16 May 2017)*

## MIXED AGREEMENTS (3/4)

**Regarding international Agreements open only to States and not also to Organizations** (only States can be Contracting States)

### **Court of Justice of the European Union**

*“in any event, although under the ILO Convention the [European Union] cannot itself conclude Convention No 170, its external competence may, if necessary, be exercised through the medium of the Member States acting jointly in the [European Union]’s interest”* (Opinion 2/91 of 19 March 1993)

**Council of the European Union** authorizes EU Member States to sign and ratify on behalf of the Union international conventions/agreements regarding those parts falling within its competence

The legal consequences related to these conventions/agreements must be borne by the EU Member States

## **MIXED AGREEMENTS (4/4)**

### **Difficulties and Inconveniences**

- **EU Member States Ratification**
- **European Council Decision**
- **Rights and Obligations Allocation Procedure**
- **Internal Agreement to Implement a Mixed Agreement**

# **SIXT EU PASSENGER TRANSPORT REGULATIONS**

## **PASSENGER TRANSPORTS**

**Strengthen EU Passenger Rights travelling within Union (departing and arriving)**

## **ORIGINAL ASPECT**

- Reference to International Unimodal Transport Conventions**
- Partially or Totally Implementation International Provisions/Rules**
- Number Contracting Member States**

## **OBJECTIVES**

**Ensure High Level Passenger Protection > Regulations Enactment (1997-2009) > Intra-Eu and Extra-EU Relationships**

# EU PASSENGER TRANSPORT REGULATIONS

## AIR TRANSPORT

- Reg. (EC) No 2027/1997 of the Council 9 October 1997 on air carrier liability in the event of accidents
- **Reg. (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Reg. (EC) No 2027/97 on air carrier liability in the event of accidents** (1999 Montreal Convention for the Unification of Certain Rules Relating to International Carriage by Air)
- Reg. (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

## RAILWAY TRANSPORT

- **Reg. (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations** (Appendix A, Uniform rules concerning the Contract for International Carriage of Passengers and Luggage by Rail (CIV) to the Convention concerning International Carriage by Rail (COTIF) of 9 May 1980, as modified by the Protocol for the modification of the Convention concerning International Carriage by Rail of 3 June 1999 (1999 Protocol))

## MARITIME TRANSPORT

- **Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents** (relevant provisions of 1974 Athens Convention and 2002 Protocol enclosed in the Annex)
- Reg. (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Reg. (EC) No 2006/2004

## ROAD TRANSPORT

- Reg. (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004

# **PASSENGER TRANSPORT**

## **INTERNAL COMPETENCE**

- Share Competence**
  - - According to Art. 4.2, shared competence between the EU and EU countries applies in:**
    - - - Transport (let. g)**

## **EXTERNAL COMPETENCE**

- - International Transport Agreements/Conventions : Mixed Agreements**



**Does EU exceed its competences implementing  
an international convention/agreement in EU legal order  
by a regulation?**

# **EU PRE-EMPTION**

## **EU Passenger Transport Regulation**

EU Passenger Transport Regulations > EU pre-emption procedure

## **EU Passenger Transport Competence**

Shared Internal and External Competence > Exclusive Internal and External Competence

# EU PRE-EMPTION

## Art. 2 TFEU

1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.
2. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. **The Member States shall exercise their competence to the extent that the Union has not exercised its competence.** The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.

## **EXCLUSIVE COMPETENCE IN PASSENGER TRANSPORT**

**Reg. (EC) No 889/2002** of the European Parliament and of the Council of 13 May 2002 amending Council Reg. (EC) No 2027/97 **on air carrier liability in the event of accidents**

- 1999 Montreal Convention for the Unification of Certain Rules Relating to International Carriage by Air
- - high number of Contracting States (137)

**Reg. (EC) No 392/2009** of the European Parliament and of the Council of 23 April 2009 **on the liability of carriers of passengers by sea in the event of accidents (relevant**

- 1974 Athens Convention and 2002 Protocol enclosed
- lower number of Contracting States (AC 25; AP 31)

# **PASSENGER MARITIME TRANSPORT**

## **Reg. (EC) No 392/2009**

- Council Regulation (EEC) No 4056/86 of 22 December 1986 (now repealed) laying down detailed rules for the application of Articles 85 and 86 TEC (Art. 105 and 106 TFEU; EU competition rules) to maritime transport.
- Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)

# **PASSENGER MARITIME TRANSPORT**

**Reg. (EC) No 392/2009**

- **Consumer Protection**
- **Passenger Rights > competition among modes of transport**

# PASSENGER MARITIME TRANSPORT

Reg. (EC) No 392/2009

- **2001 WHITE PAPER “European transport policy for 2010: time to decide”**

*“The next step is to extend the Community’s passenger protection measures to the other modes of transport, notably rail and maritime navigation and, as far as possible, urban transport services. Specific new measures are needed on users’ rights in all modes of transport so that, regardless of the mode of transport used, users can both know their rights and enforce them. These measures need in particular to meet users’ requirements as referred to in the Commission Communication on services of general interest in Europe”*

# **PASSENGER MARITIME TRANSPORT**

**Reg. (EC) No 392/2009**

**- Communication from the Commission to the European Parliament and the Council, of 16 February 2005 “Strengthening Passenger Rights within the European Union”**

## **II. THE DEVELOPMENT OF A POLICY ON PASSENGER RIGHTS**

Reviewing the measures already proposed or adopted, it is possible to identify those rights that should be strengthened by Community action regardless of the means of transport used:

- **specific measures in favour of persons with reduced mobility**
- **automatic and immediate solutions when travel is interrupted**
- **liability in the event of death or injury of passengers**
- **treatment of complaints and means of redress**
- **passenger information**
- **other initiatives**



# PASSENGER MARITIME TRANSPORT

Reg. (EC) No 392/2009

## Liability in the event of death or injury of passengers

Whatever the mode of transport, EU legislation should ensure a minimum degree of high-level cover in the event of death or injury as a result of an accident and cover passengers for both domestic and international travel while taking account of the obligations incumbent upon the European Union through its accession to international conventions

[...]

As regards maritime transport, the 1974 Athens Convention on the carriage by sea of passengers and their luggage was amended two years ago, when the parties concluded a new protocol on liability. According to the EU Commission, the 2002 Athens Protocol could serve as a basis for new Community rules. The EU Commission has already proposed that the Community and the Member States should become contracting parties to the Protocol as soon as possible. However, the provisions of the Protocol would not apply to purely national services. It would be necessary therefore to extend them to all Community maritime transport services

EU Commission will examine the possibilities of creating a homogeneous liability and insurance scheme in the event of death or injury of passengers travelling by sea, regardless of where the ship is registered

# **PASSENGER MARITIME TRANSPORT**

## **Residual EU Member States Competence**

### **Partial Implementation**

#### **Implementation of “relevant” provisions of the amended Athens Convention**

#### **Share Competence related to the issues not covered by the Regulation: Liability Limits**

## **EU ACCESSION - 2002 Athens Protocol**

### **- Art. 100 TFEU**

Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof **(2012/22)**

### **- Art. 81 TFEU**

Council Decision of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof **(2012/23/EU)**

## AIR PASSENGER TRANSPORT

Reg. (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents

### Passenger Protection

It is important to ensure a **proper level of compensation for passengers involved in air accidents**

### Armonized Rules

Action at EU level is desirable in order to **create a single set of rules for all Community air carriers**

Distinction between national and international transport has been eliminated and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the Community.

Uniform liability limits for loss of, damage to, or destruction of, baggage and for damage occasioned by delay, which apply to all travel on EU carriers, will **ensure simple and clear rules for both passengers and airlines and enable passengers to recognise when additional insurance is necessary**

### Unlimited Air Carrier Liability

A system of **unlimited liability in case of death or injury to passengers is appropriate in the context of a safe and modern air transport system**

# AIR PASSENGER TRANSPORT

Reg. (EC) No 889/2002

## **Annex:**

- Air carrier liability for passengers and their baggage
- Compensation in the case of death or injury
- Advance payments
- Passenger delays
- Baggage delays
- Destruction, loss or damage to baggage
- Higher limits for baggage
- Complaints on baggage
- Liability of contracting and actual carriers
- Time limit for action
- Basis for the information

## **AIR PASSENGER TRANSPORT**

Reg. (EC) No 889/2002 implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. It also extends the application of these provisions to carriage by air within a single Member State

### **Air Carrier Liability**

Art. 1

The liability of an EU air carrier in respect of passengers and their baggage must be governed by all provisions of the Montreal Convention relevant to such liability.

### **Compulsory Insurance**

EU air carrier must be insured up to a level that is adequate to ensure that all persons entitled to compensation receive the full amount to which they are entitled in accordance with this Reg. (EC) No 889/2002

## AIR PASSENGER TRANSPORT

### AIR CARRIER LIABILITY FOR PASSENGERS AND THEIR BAGGAGE

#### Compensation in the case of death or injury

There are **no financial limits to the liability for passenger injury or death.**

For damages up to 100,000 SDRs the air carrier cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault

#### Advance payments

If a passenger is killed or injured, the air carrier must make an **advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation.** In the event of death, this **advance payment shall not be less than 16,000 SDRs** (approximate amount in local currency)

#### Liability of contracting and actual carriers

If the air carrier actually performing the flight is not the same as the contracting air carrier, the passenger has the right to address a complaint or to make a claim for damages against either. If the name or code of an air carrier is indicated on the ticket, that air carrier is the contracting air carrier.

## **AIR PASSENGER TRANSPORT**

### **AIR CARRIER LIABILITY FOR PASSENGERS AND THEIR BAGGAGE**

#### **Baggage delays**

In case of baggage delay, the **air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures**. The liability for baggage delay is limited to **1,000 SDRs**

#### **Destruction, loss or damage to baggage**

**Air carrier is liable for destruction, loss or damage to baggage up to 1,000 SDRs**. In the case of checked baggage, it is liable even if not at fault, unless the baggage was defective. In the case of unchecked baggage, the carrier is liable only if at fault.

#### **Higher limits for baggage**

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee.

#### **Complaints on baggage**

If the baggage is damaged, delayed, lost or destroyed, the passenger must write and complain to the air carrier as soon as possible. In the case of damage to checked baggage, the passenger must write and complain within **7 days**, and in the case of **delay within 21 days**, in both cases from the date on which the baggage was placed at the passenger's disposal.



# **EU EXTERNAL COMPETENCES - PRE-EMPTION**

## **1. POSITIVE ASPECTS**

## **2. NEGATIVE ASPECTS**

## **PRE-EMPTION**

### **POSITIVE ASPECTS (1/2)**

#### **BETTER PROTECTION**

- International Convention provides a limited passenger protection in the light of the lower number of Contracting States
- EU Institution: no a specific independent european regulation applicable in the EU
- Although the scope of the EU regulations is related the the EU passenger transport they have an extra-EU impact in the light of their interaction with the international conventions

#### **STATES INACTION**

- Slowness of the negotiation, adoption and ratification process of the international conventions

## **PRE-EMPTION**

### **POSITIVE ASPECTS (2/2)**

- 1.** Faster process to adopt and enact EU rules
- 2.** Faster process to amend international convention provision
- 3.** International provision become European provisions (EU Law)
- 4.** Court of Justice of the European Union overcomes the absence of an International Judicial Authority

# **PRE-EMPTION**

## **NEGATIVE ASPECTS (1/2)**

### **1. Extension/expansion of the EU exclusive competences in shared competence fields as transport:**

- **EU Member States are loosing their freedom/sovereignty to**
  - **enact national rules**
  - **establish external relationships with Third States**
  - **agree and reach international agreements**

### **2. What is the real extension of the EU exclusive competences in the transport sector?**

For example: regarding 1999 Montreal Convention does EU competence is related to Passenger Air Transport or Passenger and Cargo Air Transport?

## **PRE-EMPTION**

### **NEGATIVE ASPECTS (2/2)**

**3. Should the interpretation of Court of Justice of the European refer to notions related to passengers or goods transport? (Regarding the 1956 CMR Convention, see: CJEU 4 May 2010, *TNT Express Nederland BV*, Case C-533/08)**

**4. Would be the judgements delivered by Court of Justice on passenger maritime transport regulation only applicable to EU Member States, excluding Third States?**

**5. Shift from a Multilateralism Perspective to a Regional Perspective; Transport is clearly international**

**6. To have recourse to a Regional Judicial Authority is not an adequate solution to ensure the uniform implementation of an international instruments.**

# Court of Justice of the European Union

## Waltz Case

Damage Notion: Passengers and Goods?

Two speeds

Member States and Third States

Harmonized EU Jurisprudence

Fragmented No-EU Jurisprudence

## WALZ CASE

CJEU Judgement 6 May 2010, Case C-63/09 - *Axel Walz v Clickair SA*

### Preliminary ruling Proceeding (Article 267 TFEU)

#### Interpretation

**Art. 22.2 of the Convention for the Unification of Certain Rules for International Carriage by Air**, concluded in Montreal on 28 May 1999 (signed by the European Community on 9 December 1999 and approved on its behalf by Council Decision 2001/539/EC of 5 April 2001)

#### Proceedings

Mr. Walz, a passenger of the air carrier Clickair SA and Clickair, concerning **compensation claim for damage resulting from the loss of checked baggage** (Total Amount € 3,200 = € 2,700 [MD] + € 500 [NMD])

## WALZ CASE

### Article 22.2, 1999 Montreal Convention - Limits of liability in relation to delay, baggage and cargo:

*“In the carriage of baggage, the liability of the carrier in the case of destruction, loss, **damage** or delay is limited to 1 000 Special Drawing Rights [SDR] for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger’s actual interest in delivery at destination”.*



# WALZ CASE

## Legal Issue

If the **term ‘damage’**, which underpins Art. 22.2 of 1999 Montreal Convention that sets the limit of an air carrier’s liability for the damage resulting, inter alia, from the loss of baggage, **must be interpreted as including both material and non-material damage**

## Preliminary Ruling Question

**1999 Montreal Convention is integral part of the European Union legal order from the date on which the convention entered into force, CJEU has jurisdiction to give a preliminary ruling concerning its interpretation**

# WALZ CASE

## Legal Issue

- **1999 Montreal Convention**
  - **does not contain any definition of the term “damage”**
  - **aims at unifying rules for international carriage by air**
- > **Need to give a uniform and autonomous interpretation of the term “damage”**
- > **Interpretation according to rules of general international law, which are binding on the European Union:**

Article 31 of the Convention on the Law of Treaties, signed in Vienna on 23 May 1969, which codifies rules of general international law, states that a treaty must be interpreted in **good faith in accordance with the ordinary meaning** to be given to its terms in their context and in the light of its object and purpose

# WALZ CASE

## Legal Issue

### 1999 Montreal Convention

- ensure protection of the interests of consumers in international carriage by air
- need for equitable compensation based on the principle of restitution
- a system of strict liability for air carriers

**A system of strict liability of that kind implies that an “equitable balance of interests” be maintained, in particular as regards the interests of air carriers and of passengers**

**Air Carrier Strict Liability > Liability Limitation Regime > total damage (material and non-material)**

**“Equitable balance of interests”: requires that there be clear limits on compensation relating to the total damage sustained by each passenger in each of those situations, regardless of the nature of the damage caused to that passenger.**

## WALTZ CASE

### CJEU Answer

The **term “damage”** mentioned in Art. 22.2, 1999 Montreal Convention that sets the limit of an air carrier’s liability for the damage resulting, inter alia, from the loss of baggage, must be interpreted as **including both material and non-material damage**