



Plenary sitting

A8-0190/2016

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INTERIM REPORT

on the draft Council decision on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, with regard to the aspects related to judicial cooperation in civil matters (14112/2015 – C8-0409/2015 – 2015/0136(NLE))

Committee on Legal Affairs

Rapporteur: Pavel Svoboda

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the draft Council decision on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, with regard to the aspects related to judicial cooperation in civil matters

(14112/2015 – C8-0409/2015 – 2015/0136(NLE))

- having regard to the draft Council decision (14112/2015),
- having regard to the request for consent submitted by the Council in accordance with Article 81 and Article 218(6) point (a) (v) of the Treaty on the Functioning of the European Union (C8-0409/2015),
- having regard to Article 3(2) of the Treaty on the Functioning of the European Union,
- having regard to Protocol No 22 on the position of Denmark annexed to the Treaties¹,
- having regard to the opinion of the Court of Justice of 14 October 2014²,
- having regard to the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the '1996 HNS Convention'),
- having regard to the Protocol of 2010 to the 1996 HNS Convention (the '2010 HNS Convention'),
- having regard to the proposal for a Council decision (COM(2015)0305),
- having regard to Council decision 2002/971/EC of 18 November 2002 authorising Member States, in the interest of the Community to ratify or accede to the 1996 HNS Convention³,
- having regard to the proposal for a Council decision authorizing the Member States to ratify in the interest of the European Community the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the 'HNS Convention') (COM(2001)674),
- having regard to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the 'recast of Brussels I Regulation')⁴,
- having regard to the Statement by the Commission to the minutes of the Permanent Representatives Committee and of the Council of 20 November and of 8 December

¹ OJ C 326, 26.10.2002, p.299.

² Opinion of the Court of Justice of 14 October 2014, 1/13, ECLI:EU:C:2014:2303.

³ OJ L 337, 13.12.2002, p. 55.

⁴ OJ L 351, 20.12.2012, p.1.

2015¹,

- having regard to the paper of 18 September 2015 of the shipping industry urging Member States to ratify or accede to the Protocol of 2010 to the HNS Convention soonest in line with the Commission's proposed approach²,
 - having regard to Rule 99(3) of its Rules of Procedure,
 - having regard to the interim report of the Committee on Legal Affairs (A8-0190/2016),
- A. whereas the aim of the 2010 HNS Convention is to ensure accountability and the payment of adequate, prompt and effective compensation for loss or damage to persons, property and the environment arising from the carriage of hazardous and noxious substances by sea through the specialised International HNS compensation fund;
- B. whereas the basic principles underlying International Maritime Organisation conventions, including the 2010 HNS Convention, are strict liability of the shipowner, mandatory insurance to cover damages to third parties, a right of direct recourse of persons suffering damages against the insurer, limitation of liability and, in the case of oil and hazardous and noxious substances, a special compensation fund that pays for damages when these exceed the liability limits of the shipowner;
- C. whereas therefore on the one hand it aims to provide for the "polluter pays" principle and the principles of prevention and precaution to the effect that preventive action should be taken in case of possible environmental damage, and thus falls within the Union policy and general principles regarding the environment, and on the other hand it aims to regulate issues arising from damage caused by maritime transport and to prevent and minimise such damage, and thus falls within the Union policy on transport;
- D. whereas the 2010 HNS Convention contains rules on the jurisdiction of courts of state parties over claims made by persons suffering damage covered by the convention against the owner or its insurer, or against the specialised HNS compensatory fund, also containing rules on the recognition and enforcement of judgments by courts in state parties;
- E. whereas according to the Commission proposal (COM(2015)0305), the conclusion of the 2010 HNS Convention would thus overlap with the scope of the rules of the recast of Brussels I Regulation;
- F. whereas the recast of Brussels I Regulation allows for multiple grounds of jurisdiction, when at the same time Chapter IV of the 2010 HNS Convention establishes a very restrictive jurisdiction, recognition and enforcement regime in order to ensure a level playing field for claimants and ensure uniform application of the rules regarding liability and compensation;
- G. whereas on the one hand the specific nature of the jurisdiction regime of the 2010 HNS

¹ Item note 13142/15.

² Available online at: <http://www.ics-shipping.org/docs/default-source/Submissions/EU/hazardous-and-noxious-substances.pdf>.

Convention, which is aimed at ensuring that victims of accidents can benefit from clear procedural rules and legal certainty, thus leading to more effective claims before courts, and on the other hand the anticipated legal and practical difficulties involved in applying a separate jurisdiction regime with the Union as compared to that applying for other parties to the 2010 HNS Convention, justify an exception to the general application of the recast of Brussels I Regulation;

- H. whereas Denmark is exempt from the application of Title V of Part Three TFEU and does not take part in the adoption of the proposed Council decision with regard to aspects related to judicial cooperation in civil matters;
 - I. whereas the overlap between the 2010 HNS Convention and the Union rules on judicial cooperation in civil and commercial matters has formed the legal basis for decision 2002/971/EC , since the 2010 HNS Protocol amended the 1996 HNS Convention, the effect of the 2010 HNS Convention on Union rules should be assessed in the light of the scope and the rules of Directive 2004/35/EC of the European Parliament and the Council (the 'ELD')¹ that has become part of the EU legal order since decision 2002/971/EC was adopted;
 - J. whereas the ELD excludes from its scope of application environmental damages or imminent threats of such damages that are covered by the 2010 HNS Convention once the latter enters into force (Article 4(2) and Annex IV of the ELD);
 - K. whereas the 2010 HNS Convention establishes strict liability of the shipowner for any damages resulting from the carriage of hazardous and noxious substances by sea covered by the Convention as well as the obligation to take out insurance or other financial security to cover its liability for damage under the Convention prohibiting for that purpose any other claim being made against the shipowner except in accordance with the said Convention (Article 7(4)(5));
 - L. whereas unless all Member States ratify or accede to the 2010 HNS Convention within the same timeframe, there is a risk that the shipping industry be subjected to two different legal regimes at the same time, a Union one and an international one, which could also create a disparity for the victims of pollution, such as coastal communities, fishermen, etc. and would also be against the spirit of the 2010 HNS Convention;
 - M. whereas the other International Maritime Organisation Conventions contained in Annex IV of the ELD have proved effective, as they have managed to strike a balance between environmental and commercial interests through the clear channelling of liability whereby there is normally no uncertainty as to who the liable party is, as well as through the establishment of compulsory insurance and swift compensation mechanisms, which are not limited to environmental damage only;
- 1. Asks the Council and the Commission to take into account the following recommendations:
 - (i) Ensure that the uniformity, integrity and effectiveness of common Union rules will

¹ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

not be adversely affected by the international commitments undertaken by the ratification of or accession to the 2010 HNS Convention in accordance with the settled case law of the Court of Justice¹;

- (ii) Pay greater attention in this regard to the overlap between the recast of Brussels I Regulation and the 2010 HNS Convention in so far as rules of procedure applicable to claims and actions under the said Convention before courts of state parties are concerned;
 - (iii) Ensure that the possibility for a conflict between the ELD and the 2010 HNS Convention is minimised by taking all appropriate action to ensure that the exclusivity clause under Article 7(4) and (5) of the 2010 HNS Convention, whereby no other claim can be made against the shipowner except in accordance with the said Convention, is fully respected by the ratifying or acceding Member States;
 - (iv) Ensure that the risk is diminished of creating and consolidating a competitive disadvantage for the states that are ready to accede to the 2010 HNS Convention, compared to those who might wish to delay this process and continue to be bound by the ELD only;
 - (v) Ensure the removal of the permanent co-existence of two maritime liability regimes - a Union-based one and an international one - which would result in the fragmentation of Union legislation and, moreover, compromise the clear channelling of liability and could lead to lengthy and costly legal proceedings to the detriment of victims and the shipping industry;
 - (vi) Ensure in that regard that a clear obligation is imposed on Member States to take all necessary steps to achieve a concrete result, namely to ratify or accede to the 2010 HNS Convention within a reasonable timeframe, which should be no longer than two years from the date of entry into force of the Council decision;
2. Concludes that this interim report would be a further possibility for the Council and the Commission to address the recommendations set out in paragraph 1;
 3. Instructs its President to request further discussion with the Commission and the Council;
 4. Instructs its President to forward this resolution to the Council and the Commission and the governments and parliaments of the Member States.

¹ Opinion of the Court of Justice of 19 March 1993, 2/91, ECLI:EU:C:1993:106, paragraph 25; Judgment of the Court of Justice of 5 November 2002, *Commission of the European Communities v Kingdom of Denmark*, C-467/98, ECLI:EU:C:2002:625, paragraph 82; Opinion of the Court of Justice of 7 February 2006, 1/03, ECLI:EU:C:2006:81, paragraphs 120 and 126; Opinion of the Court of Justice of 14 October 2014, 1/13, ECLI:EU:C:2014:2303.

EXPLANATORY STATEMENT

Parliament received a letter requesting it to give its consent to the draft Council decision on the ratification and accession by Member States on behalf of the Union to the 2010 Protocol to the HNS Convention on 17 December 2015.¹ In the absence of a REIO (Regional Economic Integration Organisation) clause in the text of the Convention or the Protocol, Member States should conclude this international agreement on behalf of the Union, after the authorisation of the Council and the consent of the European Parliament upon a proposal by the Commission (Article 218(6) (a) TFEU). The rapporteur proposes an interim report in order to work towards a positive outcome with the Council and the Commission. The rapporteur believes that it would not be appropriate for the Parliament to give its consent before the uniformity, integrity and effectiveness of Union law as well as the fundamental principle of conferral of EU competences is ensured.

The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 is the last one of the International Maritime Organisation (IMO) Conventions dealing with liability and compensation for damages arising from the carriage of Hazardous and Noxious Substances by sea, including liquefied natural gas (LNG) and liquefied petroleum gas (LPG) that has not yet been ratified. Having gained experience with similar international regimes governing liability for damages arising from other shipping activities, such as oil carriage by tankers, the IMO adopted this international agreement, as amended by the 2010 HNS Protocol, to complement the system of maritime liability conventions with a specialised instrument. Neither the 1996 HNS Convention, nor the 2010 Protocol to the HNS Convention have entered into force.

The 2010 HNS Convention establishes strict liability of the owner of the ship carrying HNS for any damage resulting from an incident in connection with the carriage of HNS by sea and on board that ship. There are limited exceptions to the strict liability of the owner, which is coupled with the owner's obligation to take out insurance or other financial security to cover his liability for damage under the Convention. More importantly, a specialised compensation fund is established that is aimed at compensating any person suffering damage in connection with the carriage of HNS by sea where such person has been unable to obtain full and adequate compensation for the damage from the shipowner and its insurer. The total amount of compensation available is 250 million units of account (approximately 310 million euros in today's monetary exchange rates), based on an elaborate system of contributions paid to the HNS Fund by persons receiving HNS in each State Party.

Chapter IV of the 2010 HNS Convention establishes rules on the jurisdiction of courts, and the recognition and enforcement of judgments, and thus overlaps in scope with the rules contained in the recast Brussels I Regulation. In assessing the difference between the two jurisdiction regimes, it becomes clear that the HNS Convention contains a rather restrictive regime of jurisdiction, which contrasts the multiple grounds of jurisdiction available under the recast Brussels I Regulation.

The rapporteur understands that in light of the highly specific nature of the jurisdiction regime of the HNS Convention - which stems from an effort to avoid 'forum shopping', ensuring the equal treatment of claimants, while guaranteeing the sound administration of justice through

¹ SGS15/14576 regarding Decision 14112/15.

the avoidance of difficulties involved in settling the same issues, involving the same experts, the same witnesses and the same defendants in different courts in several jurisdictions - as well as due to the anticipated legal and practical difficulties in applying a separate jurisdiction regime within the Union, as compared to that applying for other parties to the HNS Convention, an exception to the general application of the recast Brussels I Regulation is justified.

The rapporteur also understands that the conclusion of the 2010 Protocol to the HNS Convention will ensure uniform application of rules on liability and compensation in connection with accidents caused by ships carrying HNS at sea across the EU. It will also ensure availability of sufficient funds for compensation of victims of such accidents. Therefore, the rapporteur is of the opinion that an international regime, rather than regional solutions, for the purpose of ensuring uniform application of rules on liability and compensation in connection with accidents caused by ships carrying HNS at sea across the EU is better suited considering the nature of shipping as a global business with a cross-boundary impact.

In view of the significant share HNS cargo represents in maritime freight transport, the global nature of the shipping business, as well as the cross-boundary impact accidents involving HNS cargo are likely to have, the rapporteur believes it is in the interest of the Union as a whole to have a homogenous liability regime applicable to environmental damage arising from the carriage of HNS at sea, which can only be achieved if Parliament's recommendations are duly considered by the Council and the Commission.

The rapporteur stresses that the present interim report should not be seen as an impediment to the establishment of a uniform liability regime, but as an effort to ensure that this is done in the most effective and fair fashion, without impairing the uniformity, integrity and effectiveness of common rules of EU law and without creating excessive disparity for the victims of pollution (e.g. coastal communities, fishermen, etc.) and the shipping industry.

The rapporteur thus wants to enter into dialogue with the Council and the Commission in order to frame a coherent EU policy in the area of liability and compensation for environmental damage arising from the carriage of HNS at sea.

RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

Date adopted	24.5.2016
Result of final vote	+: 21 -: 0 0: 2
Members present for the final vote	Max Andersson, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Laura Ferrara, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Dietmar Köster, Gilles Lebreton, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, József Szájer, Axel Voss, Tadeusz Zwiefka
Substitutes present for the final vote	Daniel Buda, Angel Dzhambazki, Stefano Maullu
Substitutes under Rule 200(2) present for the final vote	Jens Nilsson