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*Plenary sitting*

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**A8-0076/2017**

27.3.2017

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## **RECOMMENDATION**

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 the exception of aspects related to judicial cooperation in civil matters (13806/2015 – C8-0410/2015 – 2015/0135(NLE))

Committee on Legal Affairs

Rapporteur: Pavel Svoboda

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE 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 the exception of aspects related to judicial cooperation in civil matters  
(13806/2015 – C8-0410/2015 – 2015/0135(NLE))**

**(Consent)**

*The European Parliament,*

- having regard to the draft Council decision (13806/2015),
- 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,
- having regard to the request for consent submitted by the Council in accordance with Article 100(2) and Article 218(6), second subparagraph, point (a) (v), of the Treaty on the Functioning of the European Union (C8-0410/2015),
- having regard to Council Decision 2002/971/EC of 18 November 2002 authorising the Member States, in the interest of the Community, to ratify or accede to 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)<sup>1</sup>,
- having regard to the opinion of the Court of Justice of 14 October 2014<sup>2</sup>,
- having regard to its interim resolution of 8 June 2016 on the draft Council decision<sup>3</sup>,
- having regard to the Commission follow up to the interim resolution of 4 October 2016,
- having regard to the opinion in letter form on the appropriate legal basis for the draft Council Decision above adopted by the Committee on Legal Affairs on 19 February 2016<sup>4</sup> and annexed to the interim report of the Committee on Legal Affairs (A8-0191/2016),
- having regard to Rule 99(1) and (4) and Rule 108(7) of its Rules of Procedure,
- having regard to the recommendation of the Committee on Legal Affairs (A8-0076/2017),

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<sup>1</sup> OJ L 337, 13.12.2002, p. 55.

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

<sup>3</sup> Texts adopted, P8\_TA(2016)0259.

<sup>4</sup> PE576.992.

1. Gives its consent to 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 the exception of the aspects related to judicial cooperation in civil matters;
2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 deals 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). The 2010 Protocol to the 1996 HNS Convention contained amendments to address problems identified in the 1996 HNS Convention and is to be read, interpreted and applied together with the provisions of the Convention as a single instrument, which is referred to as the '2010 HNS Convention'. 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.

Both the 1996 and the 2010 HNS Conventions overlap in scope with Directive 2004/35/EC on the liability of operators of occupational activities,<sup>1</sup> including shipping, in so far as (i) environmental damage caused to the territory, including the territorial sea, of a State Party, (ii) damage by contamination of the environment caused in the EEZ or equivalent area (up to 200 nautical miles from baselines) of a State Party, and (iii) 'preventive measures, wherever taken, to prevent or minimise such damage' are concerned.

However, there is nothing under the Directive to provide for compensation of victims of HNS pollution at sea in excess of the limits of the shipowner's liability, whereas it also lacks mandatory insurance requirements. What is more, Directive 2004/35/EC explicitly refers to the 1996 HNS Convention excluding any damage arising from an incident that is covered by that Convention, and any future amendments thereof, from its scope, provided that the Convention is in force in the Member State concerned. This is to allow for specialised international regimes that cover civil liability from specific occupational activities to prevail over the Directive, as these are deemed more effective in granting prompt and adequate compensation for environmental damage and better suited to the nature of such occupational activities.

Parliament received a letter requesting it to give its consent to the draft Council decision on the ratification of Protocol of 2010 to the HNS Convention on 17 December 2015. In view of the substantial discrepancies between the draft Council decision and the original Commission

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<sup>1</sup> OJ L 143, 30.4.2004, p. 56.

proposal, and after hearing the Commission and the Council (28 January 2016) and consulting with Parliament's Legal Service (15 March 2016), the Committee on Legal Affairs decided to make recourse to paragraph five of Rule 99 RoP and draft an interim report with recommendations for modification of the said draft Council Decision.

The main discrepancies between the draft Council decision and the Commission proposal concerned the extent of exclusive Union competence pursuant to Article 3(2) TFEU; the necessity for an obligation on Member States to ratify the Convention within a fixed-timeframe; and the appropriate legal basis for the Council Decision excluding civil justice cooperation matters, namely either Article 192 TFEU, the main provision on environmental liability, or Article 100(2), a transport provision, in conjunction with Article 218(6) TFEU.

The Committee considered that in view of the overlap between the 2010 HNS Convention on the one hand and the Environmental Liability Directive ('ELD') on the other hand, coupled with the lack in the draft Council decision of binding timeframes and clear obligations for Member States to ratify or accede to the Convention, a competitive disadvantage for the States that are ready to accede to the HNS Convention, compared to those that will delay this process could be created.

What is more, so long as all 28 Member States do not ratify the Convention, the mutually exclusive application of the ELD and the HNS Convention cannot be guaranteed and as a result there would be a risk that the industry will be subjected to two different regimes at the same time, the EU and international one, which could also create a disparity for the victims of pollution (e.g. coastal communities, fishermen, etc.).

Finally, on 17 February, the Committee on Legal Affairs considered of its own motion the change in the legal basis of the draft Council Decision excluding matters of civil justice cooperation and concluded that a triple legal basis was the most appropriate solution:

*'since the proposed Council decision is aimed at authorising Member States to ratify, or accede to, on behalf of the Union, the 2010 HNS Protocol and subsequently to be bound by the 2010 HNS Convention and considering that the latter covers not only cases of environmental damage (giving effect to the principles that preventive action should be taken and that the polluter should pay), but also cases of non-environmental damage, both caused by carriage of certain substances by sea, Articles 100(2), 192(1) and 218(6)(a)(v) TFEU constitute the appropriate legal bases for the proposal.'*

Against this background, your rapporteur proposed an interim report in order to work towards a positive outcome with the Council and the Commission that would ensure the uniformity, integrity and effectiveness of Union law as well as the fundamental principle of conferral of EU competences. The Commission welcomed the adoption by Parliament of this resolution and confirmed that it would have been ready to accept a compromise solution on the legal basis of the proposal and an extended reasonable timeframe for ratification of the 2010 HNS Convention.

The Council took note of Parliament's resolution in the Shipping Working Party at its meeting of 15 July and found that there was no scope to reopen the discussion on the text of the draft Council Decision, since it fell under the consent and not the co-decision procedure.

In view of Council's categorical denial to open up a dialogue with Parliament and the



Commission, and taking into account the necessity to promote 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, your rapporteur recommends that Parliament consent to 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 the exception of the aspects related to judicial cooperation in civil matters.

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Ratification and accession by Member States on behalf of the 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 the exception of aspects related to judicial cooperation in civil matters			
<b>References</b>	13806/2015 – C8-0410/2015 – COM(2015)0304 – 2015/0135(NLE)			
<b>Date of consultation / request for consent</b>	18.1.2016			
<b>Committee responsible</b> Date announced in plenary	JURI 18.1.2016			
<b>Committees asked for opinions</b> Date announced in plenary	ENVI 18.1.2016	TRAN 18.1.2016	PECH 18.1.2016	
<b>Not delivering opinions</b> Date of decision	ENVI 16.7.2015	TRAN 15.9.2015	PECH 15.7.2015	
<b>Rapporteurs</b> Date appointed	Pavel Svoboda 13.7.2015			
<b>Legal basis disputed</b> Date of JURI opinion	JURI 17.2.2016			
<b>Discussed in committee</b>	28.1.2016	15.3.2016	21.4.2016	28.2.2017
<b>Date adopted</b>	23.3.2017			
<b>Result of final vote</b>	+ : 20 - : 0 0 : 1			
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sajjad Karim, Sylvia-Yvonne Kaufmann, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Pavel Svoboda, Tadeusz Zwiefka			
<b>Substitutes present for the final vote</b>	Isabella Adinolfi, Daniel Buda, Angelika Niebler, Virginie Rozière, Rainer Wieland			
<b>Substitutes under Rule 200(2) present for the final vote</b>	Eugen Freund, Maria Noichl			
<b>Date tabled</b>	27.3.2017			

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

20	+
PPE	Daniel Buda, Angelika Niebler, Emil Radev, Pavel Svoboda, Rainer Wieland, Tadeusz Zwiefka
S&D	Eugen Freund, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, Maria Noichl, Virginie Rozière
ALDE	Jean-Marie Cavada, António Marinho e Pinto
GUE/NGL	Kostas Chrysogonos
Verts/ALE	Max Andersson, Julia Reda
EFDD	Isabella Adinolfi, Joëlle Bergeron
ENF	Marie-Christine Boutonnet

0	-

1	0
ECR	Sajjad Karim

**Key to symbols:**

+ : in favour

- : against

0 : abstention