



Plenary sitting

A8-0078/2017

27.3.2017

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 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

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 regard to the aspects related to judicial cooperation in civil matters
(14112/2015 – C8-0409/2015 – 2015/0136(NLE))**

(Consent)

The European Parliament,

- having regard to the draft Council decision (14112/2015),
 - 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 81 and Article 218(6), second subparagraph, point (a) (v), of the Treaty on the Functioning of the European Union (C8-0409/2015),
 - having regard to Protocol No 22 on the position of Denmark annexed to the Treaties,
 - 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)¹,
 - having regard to the opinion of the Court of Justice of 14 October 2014²,
 - having regard to its interim resolution of 8 June 2016 on the draft Council decision³,
 - having regard to the Commission follow up to the interim resolution of 4 October 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 (A8-0078/2017),
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

¹ OJ L 337, 13.12.2002, p. 55.

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

³ Texts adopted, P8_TA(2016)0260.

and Noxious Substances by Sea, with regard to 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'.¹ 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.

Your 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 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.

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 proposal, and after hearing the Commission and the Council (28 January 2016) and consulting

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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 in the context of the aspects related to judicial cooperation in civil matters concerned the scope of exclusive Union competence pursuant to Article 3(2) TFEU; the extent of overlap between Chapter IV of 2010 HNS Convention and the recast Brussels I Regulation; and the necessity for an obligation on Member States to ratify the Convention within a fixed-timeframe.

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 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 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, your 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.

Your rapporteur recommends therefore 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 regard to the aspects related to judicial cooperation in civil matters.

PROCEDURE – COMMITTEE RESPONSIBLE

Title	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 regard to aspects related to judicial cooperation in civil matters			
References	14112/2015 – C8-0409/2015 – COM(2015)0305 – 2015/0136(NLE)			
Date of consultation / request for consent	18.1.2016			
Committee responsible Date announced in plenary	JURI 18.1.2016			
Committees asked for opinions Date announced in plenary	ENVI 18.1.2016	TRAN 18.1.2016	PECH 18.1.2016	
Not delivering opinions Date of decision	ENVI 16.7.2015	TRAN 15.9.2015	PECH 15.7.2015	
Rapporteurs Date appointed	Pavel Svoboda 13.7.2015			
Discussed in committee	28.1.2016	15.3.2016	21.4.2016	28.2.2017
Date adopted	23.3.2017			
Result of final vote	+ : 21 - : 0 0 : 1			
Members present for the final vote	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			
Substitutes present for the final vote	Isabella Adinolfi, Daniel Buda, Angelika Niebler, Virginie Rozière, Rainer Wieland			
Substitutes under Rule 200(2) present for the final vote	Eugen Freund, Maria Noichl			
Date tabled	27.3.2017			

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

21	+
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, Jiří Maštálka
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