



2015/0135(NLE)

29.4.2016

# AMENDMENTS

## 1 - 16

**Draft interim report**  
**Pavel Svoboda**  
(PE580.550v01-00)

on the draft Council Decision on the 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

(13806/2015 – C8-0410/2015 – 2015/0135(NLE))



**Amendment 1**  
**Daniel Buda**

**Motion for a resolution**  
**Recital A**

*Motion for a resolution*

A. whereas the aim of the 2010 HNS Convention is to **provide** 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 International HNS Fund;

*Amendment*

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;

Or. ro

**Amendment 2**  
**Daniel Buda**

**Motion for a resolution**  
**Recital B**

*Motion for a resolution*

B. whereas therefore on the one hand it aims to provide for the polluter pays principle and for the **principle** that preventive action should be taken in case of environmental damage, and thus falls within the Union policy **on** the environment, and on the other hand it aims to regulate damage caused by maritime transport, as well as to prevent and minimise such damage, and thus falls within the Union policy on transport;

*Amendment*

B. whereas therefore on the one hand it aims to provide for the polluter pays principle and for 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, as well as to prevent and minimise such damage, and thus falls within the Union policy on transport;

Or. ro

**Amendment 3**  
**Daniel Buda**

**Motion for a resolution**  
**Recital C**

*Motion for a resolution*

C. whereas according to the Commission proposal (COM(2015)0304), the conclusion of the 2010 HNS Convention would **affect** the scope **and** the rules of the Environmental Liability Directive;

*Amendment*

C. whereas according to the Commission proposal (COM(2015)0304), the conclusion of the 2010 HNS Convention would **thus overlap with** the scope **of** the rules of the Environmental Liability Directive;

Or. ro

**Amendment 4**  
**Daniel Buda**

**Motion for a resolution**  
**Recital D**

*Motion for a resolution*

D. whereas the 2010 HNS Convention overlaps in scope with the Environmental Liability Directive in so far as environmental damage caused to the territory and marine waters under the jurisdiction of a state party and preventive measures to prevent or minimise such damage are concerned;

*Amendment*

D. whereas the 2010 HNS Convention overlaps in scope with the Environmental Liability Directive in so far as environmental damage caused to the territory and marine waters under the jurisdiction of a state party, **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 preventive measures to prevent or minimise such damage are concerned;

Or. ro

**Amendment 5**  
**Daniel Buda**

**Motion for a resolution**

## Recital E

### *Motion for a resolution*

E. whereas the 2010 HNS Convention establishes strict liability of the shipowner for any damages resulting from HNS carriage by sea covered by 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));

### *Amendment*

E. whereas the 2010 HNS Convention establishes strict liability of the shipowner for any damages resulting from HNS carriage by sea covered by the Convention ***as well as the obligation to take out insurance or other financial security to cover his 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));

Or. ro

## Amendment 6 Daniel Buda

### Motion for a resolution Recital G

### *Motion for a resolution*

G. whereas thus the ELD excludes from its scope of application environmental damages or imminent threats of such damages covered by the 2010 HNS Convention once the latter enters into force, unless all Member States ratify or accede to the 2010 HNS Convention within the same timeframe, there ***will be*** a risk that the shipping industry be subjected to two different regimes at the same time, an EU 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;

### *Amendment*

G. whereas thus the ELD excludes from its scope of application environmental damages or imminent threats of such damages ***which are*** covered by the 2010 HNS Convention once the latter enters into force, 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 regimes at the same time, an EU 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;

Or. ro

**Amendment 7**  
**Angel Dzhambazki**

**Motion for a resolution**  
**Recital G**

*Motion for a resolution*

G. whereas thus the ELD excludes from its scope of application environmental damages or imminent threats of such damages covered by the 2010 HNS Convention once the latter enters into force, unless all Member States ratify or accede to the 2010 HNS Convention within the same timeframe, ***there will be a risk that the shipping industry be subjected to two different regimes at the same time, an EU 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;

*Amendment*

G. whereas thus the ELD excludes from its scope of application environmental damages or imminent threats of such damages covered by the 2010 HNS Convention once the latter enters into force, unless all Members ratify or accede to the 2010 HNS Convention within the same timeframe, ***a fragmented legal landscape will emerge with some Member States being subject to HNS and others to the Environmental Liability Directive. This will*** 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;

Or. en

**Amendment 8**  
**Daniel Buda**

**Motion for a resolution**  
**Recital G a (new)**

*Motion for a resolution*

***Ga. whereas the basic principles underlying International Maritime Organisation conventions also provide the basis for the 2010 HNS Convention; these principles 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 (hereinafter referred to as 'HNS'), a special compensation fund that pays for damages when these exceed***

*Amendment*

*the liability limits of the shipowner;*

Or. ro

**Amendment 9**  
**Daniel Buda**

**Motion for a resolution**  
**Recital G b (new)**

*Motion for a resolution*

*Amendment*

***Gb. whereas it is in the interest of the Union as a whole to have a homogenous liability regime applicable to damage arising from the carriage of HNS at sea;***

Or. ro

**Amendment 10**  
**Angel Dzhambazki**

**Motion for a resolution**  
**Recital I**

*Motion for a resolution*

*Amendment*

***I. whereas the 2010 HNS Convention constitutes a compensation regime and is thus, less proactive than the ELD in establishing a regime that requires operators, and directs competent authorities to require operators, to prevent or remediate an imminent threat of, or actual, environmental damage, respectively;***

***deleted***

Or. en

**Amendment 11**  
**Daniel Buda**

**Motion for a resolution**

## Paragraph 1 – point i

### *Motion for a resolution*

(i) Respect the principle of conferral of EU competences under Article 5(1) TEU and the settled case law of the Court of Justice which provides that "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, including in particular the aim and the content of the measure"<sup>1</sup>;

---

Judgment of the Court of Justice of 19 July 2012, European Parliament v Council of the European Union, C-130/10, ECLI:EU:C:2012:472, paragraph 42.

### *Amendment*

(i) **Guarantee** respect **for** the principle of conferral of EU competences under Article 5(1) TEU and the settled case law of the Court of Justice which provides that "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, including in particular the aim and the content of the measure"<sup>1</sup>;

---

Judgment of the Court of Justice of 19 July 2012, European Parliament v Council of the European Union, C-130/10, ECLI:EU:C:2012:472, paragraph 42.

Or. ro

## Amendment 12 Daniel Buda

### Motion for a resolution Paragraph 1 – point iv

#### *Motion for a resolution*

(iv) Pay attention in this regard to the overlap between the Environmental Liability Directive and the 2010 HNS Convention in so far as environmental damage caused to the territory and marine waters under the jurisdiction of a state party and preventive measures to prevent or minimise such damage (preventive measures, primary remediation, and complementary remediation) are concerned;

#### *Amendment*

(iv) Pay **increased** attention in this regard to the overlap between the Environmental Liability Directive and the 2010 HNS Convention in so far as environmental damage caused to the territory and marine waters under the jurisdiction of a state party, **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 preventive measures to prevent or minimise such damage (preventive measures, primary remediation, and complementary remediation) are concerned;

Or. ro



**Amendment 13**  
**Daniel Buda**

**Motion for a resolution**  
**Paragraph 1 – point v**

*Motion for a resolution*

(v) **Minimise** the possibility for a conflict between the Environmental Liability Directive and the 2010 HNS Convention 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 in accordance with Article 4(2) and Annex IV of the Environmental Liability Directive;

*Amendment*

(v) **Ensure that** the possibility for a conflict between the Environmental Liability Directive 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 in accordance with Article 4(2) and Annex IV of the Environmental Liability Directive;

Or. ro

**Amendment 14**  
**Daniel Buda**

**Motion for a resolution**  
**Paragraph 1 – point vi**

*Motion for a resolution*

(vi) **Diminish also** the risk 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;

*Amendment*

(vi) **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;

Or. ro

**Amendment 15**  
**Daniel Buda**

**Motion for a resolution**  
**Paragraph 1 – point vii**

*Motion for a resolution*

(vii) **Avoid** the permanent co-existence of two maritime liability regimes - an EU-based one and an international one - which would compromise the clear channelling of liability and could lead to lengthy and costly legal proceedings to the detriment of victims and the shipping industry;

*Amendment*

(vii) **Ensure the removal of** the permanent co-existence of two maritime liability regimes - an EU-based one and an international one - which would **result in the fragmentation of EU 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;

Or. ro

**Amendment 16**  
**Max Andersson**

**Motion for a resolution**  
**Paragraph 1 – point viii**

*Motion for a resolution*

(viii) 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 **four** years from the date of entry into force of the Council decision;

*Amendment*

(viii) 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;

Or. en