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## **REPORT**

on the proposal for a Council decision authorising the Member States to sign and ratify in the interest of the European Community the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention)

(COM(2001) 675 – C5-0029/2002 – 2001/0271(CNS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Willi Rothley

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE.....	4
LEGISLATIVE PROPOSAL .....	5
DRAFT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT .....	6

## PROCEDURAL PAGE

By letter of 18 January 2002 the Council consulted Parliament, pursuant to Article 67(1) of the EC Treaty and Article 300 of the EC Treaty, on the proposal for a Council decision authorising the Member States to sign and ratify in the interest of the European Community the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention) (COM(2001) 675 – 2001/0271(CNS)).

At the sitting of 4 February 2002 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy and the Committee on Regional Policy, Transport and Tourism for their opinions (C5-0029/2002).

The Committee on Legal Affairs and the Internal Market had appointed Willi Rothley rapporteur at its meeting of 24 January 2002.

It considered the Commission proposal and draft report at its meetings of 16 April, 13 May and 28 May 2002.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley, vice-chairman and rapporteur; Bill Miller, vice-chairman; Paolo Bartolozzi, Maria Berger, Philip Charles Bradbourn (for Malcolm Harbour), Carlos Carnero González (for François Zimeray pursuant to Rule 153(2)), Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Othmar Karas (for Nicole Fontaine), Piia-Noora Kauppi (for The Lord Inglewood), Kurt Lechner, Klaus-Heiner Lehne, Neil McCormick, Helmuth Markov (for Alain Krivine pursuant to Rule 153(2)), Arlene McCarthy, Manuel Medina Ortega, Elena Ornella Paciotti, Astrid Thors, Marianne L.P. Thyssen, Rijk van Dam and Joachim Wuermeling.

The Committee on the Environment, Public Health and Consumer Policy and the Committee on Regional Policy, Transport and Tourism decided on 19 February 2002 and 21 February 2002 not to deliver opinions.

The report was tabled on 28 May 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

**Proposal for a Council decision authorising the Member States to sign and ratify in the interest of the European Community the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention) (COM(2001) 675 – C5-0029/2002 – 2001/0271(CNS))**

The proposal is approved.

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the proposal for a Council decision authorising the Member States to sign and ratify in the interest of the European Community the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention) (COM(2001) 675 – C5-0029/2002 – 2001/0271(CNS))**

**(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2001) 675<sup>1</sup>),
  - having been consulted by the Council pursuant to Articles 67(1) and 300 of the EC Treaty (C5-0029/2002),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0201/2002),
1. Approves the Commission proposal;
  2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  3. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;
  4. Asks to be consulted again should the Council intend to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 51, 26.2.2002, p. 371(E).

## EXPLANATORY STATEMENT

### 1. Background

Bunker oil is mineral oil, including lubricating oil, used for the **operation or fuelling** of vessels. Oil products in fuel oil bunkers (some ships have several thousand tonnes on board) present a serious pollution risk, since in case of shipwreck (such as the wreck of the timber freighter *Pallas* in autumn 1998) they are particularly hard to recover and have a considerable toxic effect on the marine environment.

Under Article 14 of the International Convention on Civil Liability for Bunker Oil Pollution Damage (London, 23 March 2001), the Convention will not enter into force until a year after 18 States at least have ratified it.

The regulatory objective of the convention is to provide adequate, prompt, and effective financial compensation to persons who suffer damage caused by oil spills, when oil is carried as fuel in ships' bunkers. It is applicable to damage caused on the territory, including the territorial sea, and in exclusive economic zones of States Parties.

It has not yet been implemented, since it has not yet been ratified by a sufficient number of States Parties. This was expressly regretted by the European Parliament at the first reading of the '*Erika*' package in June 2001<sup>1</sup>.

### 2. Substance of the proposal – Article 1

The '*proposal for a Council decision authorising the Member States to sign and ratify in the interest of the European Community the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*', currently before the Committee on Legal Affairs and the Internal Market, was necessary for the following reason:

As is customary practice in International Maritime Organisation (IMO) liability treaties, the Bunkers Convention can be ratified only by States and not communities of States (Article 12 of the Convention). As things stand at present, the Bunkers Convention does not recognise the Community's sole jurisdiction over provisions on jurisdiction, recognition, and enforcement of judgments.

It was only at the last stage of the negotiations, in 2000 and 2001, that the attention of the Bunkers Convention negotiators was drawn to the imminent entry into force of Regulation (EC) No 44/2001<sup>2</sup>. It is a general principle of Community law, recognised by the European Court of Justice, that Member States forfeit the right to conclude international agreements in areas governed internally by Community law. The adoption of Regulation (EC) No 44/2001 in December 2000 rendered the jurisdiction rules of the two legal instruments mutually incompatible, and by the time this was noticed it was too late for any further negotiations on the text of the Convention.

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<sup>1</sup> European Parliament resolution of 14 June 2001, A5-0201/2001, on the establishment of a fund for the compensation of oil pollution damage in European waters (Amendment 4).

<sup>2</sup> Regulation of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1.

The current position is that neither the Member States individually (by virtue of Regulation (EC) No 44/2001) nor the Community (by virtue of the legal nature of the Bunkers Convention) are in a position to approve the Convention.

**In order to escape from this anomalous situation, and thus protect the interests of the Community with respect to its foreign policy responsibilities while at the same time enabling the Member States to ratify the Convention, the Commission is proposing a Council decision to approve ratification while retaining the possibility of a reservation.**

The Council – after consulting the European Parliament – would authorise the Member States as an exceptional measure to ratify the Bunkers Convention in the interest of the Community, with the reservation that the Member States undertake to apply Regulation (EC) No 44/2001 to their mutual relations.

### **3. The reservation in Article 2**

- In the first reservation, should any Member State sign the Convention, the State in question would declare that the Community rules on jurisdiction would apply if the pollution damage had been caused in the territory of a Member State and the accused were domiciled in a Member State of the EC. Your rapporteur considers that this reservation does no harm, but may unnecessarily complicate the situation. Moreover, there is no corresponding provision in the parallel proposal *authorising 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* (COM(2001) 674).
- In the second reservation, the signatory Member States are to declare that they are seeking a derogation from Article 10 (Recognition and enforcement of court judgments) provided that the facts occurred solely within the Community. Your rapporteur considers that this reservation has no legal effect on participants from other (non-Community) contracting States of the Convention, but applies only to Community Member States within the Community. It may therefore be approved.

### **4. The Danish opt-out (Article 5)**

This is a restatement of the legal fact that, under Part I, Article 1, of the Protocol on the position of Denmark in relation to the Treaty on European Union, Denmark does not participate in measures under Title IV of the EC Treaty.

### **5. Urgency**

Given that accidents may happen at any time, the entry into force of the Convention is a matter of great urgency.

### **6. Conclusion**

In order to protect the interests of the Community in respect of its foreign policy responsibilities while enabling the Member States to ratify the Convention seeking to reduce

the terrible consequences that ensue when the marine environment is polluted by bunker oil, your rapporteur proposes that the Council decision be supported. Parliament should therefore call on the Member States to sign and ratify the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunkers Convention) so as to enable this instrument to enter into force and apply and to fill the gap in the existing rules governing liability applying to carriage by sea.