



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 July 2013

12226/13

**Interinstitutional File:
2013/0020 (NLE)**

**TRANS 387
MAR 97**

OUTCOME OF PROCEEDINGS

from: General Secretariat of the Council

to: Delegations

No. prev. doc 11571/13 TRANS 355 MAR 81

No. Cion prop.: 6040/13 TRANS 45 MAR 13

Subject: Proposal for a Council Decision authorising Member States to sign, ratify or accede to the Cape Town Agreement of 2012 on the Implementation of the provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977

Delegations will find attached a revised version of the above proposal, reflecting the outcome of the Shipping Working Party on 11 July 2013.

Compared to the previous document, new text is indicated in **bold** and deleted text in ~~strikethrough~~.

General scrutiny reservation, in particular on new text and linguistic reservation: all delegations.

With a view to presenting the proposal to COREPER, delegations are invited to inform the Presidency and/or the Council Secretariat by Tuesday 16 July 2013 c.o.b, if they need to keep their reservations.

Proposal for a

COUNCIL DECISION

authorising Member States to sign, ratify or accede to the Cape Town Agreement of 2012 on the Implementation of the provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof, in conjunction with Article 218(5), 218(6)(a)(v) and the first subparagraph of Article 218(8)¹ thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament²,

Whereas:

- (1) Action by the European Union in the sector of maritime transport should aim to improve maritime safety.
- (2) The Torremolinos Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977, hereinafter referred to as the 'Torremolinos Protocol' was adopted on 2 April 1993.

¹ Reservation on the legal basis: DE

² OJ C , , p. .

- (3) Council Directive 97/70/EC³ setting up a harmonised safety regime for fishing vessels of 24 metres in length and over has laid down safety standards that are based upon the Torremolinos Protocol, taking as far as necessary full account of regional and local circumstances.
- (4) The Torremolinos Protocol has not entered into force, given that the necessary minimum requirements in terms of ratification have never been achieved.
- (5) In order to establish by common accord the highest practicable standards for the safety of fishing vessels that can be implemented by all the states concerned, and under the auspices of the International Maritime Organization (IMO), a draft Agreement, to be read in conjunction with the Torremolinos Protocol, was finalised at a Diplomatic Conference in Cape Town, South Africa held from 9 – 11 October 2012.
- (6) This Agreement, adopted on 11 October 2012, is entitled "the Cape Town Agreement of 2012 on the Implementation of the provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing vessels 1977" (hereinafter called "the Agreement"). The Agreement will be open for signature at IMO Headquarters from 11 February 2013 to 10 February 2014 and thereafter remain open for accession.
- (7) The provisions of the Agreement fall under the exclusive competence of the Union concerning the safety regime of fishing vessels of 24 metres in length and over.
- (8) The European Union cannot become a party to the Agreement, as it does not include a REIO (Regional Economic Integration Organisation) clause.

³ OJ L 34, 9.2.1998, p.1

- (9) It is in the interests of maritime safety and fair competition that the Agreement be now ratified or acceded to by Member States who have fishing vessels ~~in their register~~ **flying their flag** which fall within the scope of application of the Cape Town Agreement and which operate in their internal waters or territorial sea or which land catch in their port,⁴ to ensure the entry into force of the provisions of the Torremolinos Protocol. Furthermore, the entry into force of the Agreement will allow the subsequent updating of a number of provisions in the Protocol through submissions to IMO, which have, since the adoption of Directive 97/70/EC, become obsolete.
- (10) In accordance with Article 2(1) TFEU, the Council should therefore authorise Member States who have fishing vessels ~~in their register~~ **flying their flag** which fall within the scope of application of the Cape Town Agreement and which operate in their internal waters or territorial sea or which land catch in their port,⁵ to sign and ratify the Agreement or to accede to it in the interests of the Union. However, in order to safeguard the current safety levels provided through Council Directive 97/70/EC, Member States should, when signing the Agreement and depositing their instruments of ratification or accession, issue a declaration to the effect that the exemptions provided by the Agreement within its Regulations 1(6) and 3(3) in relation to annual surveys and⁶ a common fishing zone or exclusive economic zone respectively shall be excluded from application and that third country fishing vessels of 24 meters in length and over operating in their territorial or internal waters or landing catch at their ports will be subject to the safety standards laid down in the said Directive. That declaration should also specify that the exemptions provided by the Agreement within its Regulation 3(3) will not be accepted for third country fishing vessels of 24 meters in length and over and landing catch in their ports.

HAS ADOPTED THIS DECISION:

⁴ Reservation: FI.

⁵ Reservation: FI.

⁶ DK, supported by EE, FI, LV, MT, SE and UK, proposes deleting the reference to Regulation 1(6) and to annual surveys, or, as a compromise, only applying the exemptions stipulated in that Regulation to fishing vessels below 45 metres in length.

Article 1

Member States are hereby authorised to sign, sign and ratify, or accede to, as appropriate, the Cape Town Agreement of 2012 on the Implementation of the provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.

Article 2

Member States shall endeavour to take the necessary steps to deposit their instruments of ratification of, or accession to, the Agreement with the Secretary General of the International Maritime Organization within a reasonable time and, if possible, no later than two years from the date of entry into force of this Decision.⁷

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When Member States sign, ratify or accede to the Agreement, they shall also deposit the Declaration set out in the Annex to this Decision.

Article 3

This Decision will enter into force on the day following that of its publication in the *Official Journal of the European Union*.

⁷ Scrutiny reservation on changes made to Art. 2: UK
⁸ CZ requested the insertion of the following text: "Member States who have no fishing vessels flying their flag falling within the scope of application of the 2012 Cape Town Agreement shall have no obligation to become State Parties to the agreement."

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

For the Council

The President

ANNEX

DECLARATION TO BE DEPOSITED BY THE MEMBER STATES UPON SIGNATURE, RATIFICATION OR ACCESSION TO THE CAPE TOWN AGREEMENT OF 2012 ON THE IMPLEMENTATION OF THE PROVISIONS OF THE TORREMOLINOS PROTOCOL OF 1993 RELATING TO THE TORREMOLINOS INTERNATIONAL CONVENTION FOR THE SAFETY OF FISHING VESSELS, ~~1997~~ 1977

As part of a regional arrangement, authorised under Article 3(5) of the Torremolinos Protocol of 1993, [*insert name of the Member State contracting party*] is bound by relevant European Union (EU) legislation (Council Directive 97/70/EC of 11 December 1997) setting up a harmonised safety regime for fishing vessels of 24 metres in length and over and consequently will apply the Torremolinos Protocol provisions regarding safety standards to those third country flagged fishing vessels of 24 metres in length and over that operate in its internal or territorial waters or which land catch in one of its ports, in the terms laid down by the aforementioned EU legislation.

Under this regional arrangement, the exemptions provided by the Cape Town Agreement within its Chapter I Regulation 1(6) in relation to annual surveys and within⁹ its Regulation 3(3) concerning a common fishing zone or exclusive economic zone shall be excluded from application to this depositary, and to third country fishing vessels of 24 meters in length and over while operating in the depositary's common fishing zone, exclusive economic zone¹⁰, or landing catch at its ports. Exemptions issued under Chapter I Regulation 3(3) concerning a common fishing zone or an exclusive economic zone, to fishing vessels under the scope of application in Regulation 1, shall not be accepted.

⁹ DK, supported by EE, FI, LV, MT, SE and UK, proposes deleting the words "its Regulation 1(6) in relation to annual surveys and within", in order to allow for a more flexible survey regime. As a compromise, DK proposes to apply the exemptions stipulated in that Regulation only to fishing vessels below 45 metres in length.

¹⁰ UK requested the deletion of "exclusive economic zone".