



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 July 2013**

**12354/13**

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

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**TRANS 393  
MAR 100**

## **REPORT**

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from: General Secretariat of the Council  
to: COREPER

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No. prev. doc 12226/13 TRANS 387 MAR 97  
No. Cion prop.: 6040/13 TRANS 45 MAR 13

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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  
- Examination of outstanding issue

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## **Introduction**

1. On 31 January 2013 the Commission transmitted the above proposal to the Council, authorizing the Member States to become parties to the Cape Town Agreement of October 2012, which aims at facilitating the entry into force of the Torremolinos International Convention for the Safety of Fishing Vessels of 1977 and its Protocol of 1993. The Cape Town Agreement comes under exclusive Union competence as the Protocol has been transposed into EU legislation by Council Directive 97/70/EC of 11 December 1997, which sets up a harmonised safety regime for fishing vessels of 24 metres in length and over.

## Content and context of the proposal

2. The Cape Town Agreement foresees the entry into force of the Torremolinos Protocol 12 months after the date on which not less than 22 States the aggregate number of whose fishing vessels of 24 m in length and over operating on the high seas is not less than 3,600 have expressed their consent to be bound by it. This is a considerable reduction in the fishing vessel threshold in relation to the 1993 Protocol, which can now be realistically met. Fleet size estimations will be based on the data contained in the respective FAO data base.
3. The Agreement's provisions apply to new vessels, unless specifically provided for otherwise. Certain flexibilities have been added through the Agreement to facilitate its wide acceptance. Administrations may, in accordance with a plan, progressively implement the provisions on radio-communications (chapter IX) over a period of no more than 10 years. The provisions on life-saving appliances and arrangements (chapters VII), emergency procedures, musters and drills (chapter VIII) and on ship-borne navigational equipment and arrangements (chapter X) may be implemented over a period of no more than five years.
4. Furthermore, the Agreement allows for certain specified exemptions regarding safety requirement and the place of operation. However, contracting parties are required to notify the IMO with regard to the exemptions and their terms and conditions.
5. The Agreement also amends and tightens the survey regime in so far as it includes an annual survey, a compulsory intermediate survey between years two and three and a renewal survey after no more than five years, reflecting the fact that a 5-year gap was already an option under the current regime. Whilst the Agreement provides that an Administration may exempt a ship from the annual survey, if its application is deemed to be unreasonable or impracticable, a contracting party is obliged to notify IMO if it decides to exclude the application of this exemption.

6. The draft Council Decision authorizes the Member States to be bound by the Agreement and sets out the different options by which IMO member states may express their consent to do so. It also encourages EU Member States to deposit their instruments of ratification of, or accession to the Agreement with IMO within two years from the date of entry into force of the Decision.
7. In order to safeguard the current safety levels provided in Council Directive 97/70/EC, the draft Council Decision contains a declaration to be made by Member States to the effect that the exemptions provided by the Agreement in relation to annual surveys (Chapter I Regulation 1(6)) and a common fishing zone or exclusive economic zone (chapter I Regulation 3 (3)) 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 Directive.

## **Outstanding issues**

Legal basis (footnote 1)

8. The legal basis of the proposal chosen by the Commission and supported by the Council Legal Service is Article 100(2), in conjunction with Article 218(5), 218(6)(a)(v) and the first subparagraph of Article 218(8) TFEU. However, DE holds the view that Article 218 TFEU is only applicable to international agreements concluded by the Union. For DE, Article 100 (2) in conjunction with Article 2(1) TFEU should be used as legal basis, as Article 2(1) TFEU applies in cases where the Member States themselves act in areas of exclusive Union competence.

9. MT and UK still hold a Parliamentary scrutiny reservation on the proposal

**Conclusion**

10. In the light of the above, the Committee of Permanent Representatives is invited to examine the outstanding issue with a view to solving it and reaching an agreement on the annexed draft Council Decision.

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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)<sup>1</sup> thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament<sup>2</sup>,

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.

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<sup>1</sup> Reservation: DE

<sup>2</sup> OJ C , , p. .

- (3) Council Directive 97/70/EC<sup>3</sup> 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.

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<sup>3</sup> 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 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, 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 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, 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 and 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:

## 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.

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*.



Article 4

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council*

*The President*

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**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 within 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 zone 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.

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