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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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Subject: Proposal for a 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
- Agreement in principle

INTRODUCTION

1. On 22 June 2015, the Commission submitted this proposal to the Council.
2. The proposal aims at authorising Member States to ratify and accede 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, 1996 ('1996 HNS Convention').

3. The 1996 HNS Convention was adopted in 1996 to make it possible for compensation to be paid to victims of accidents involving hazardous and noxious substances, such as chemicals. The 1996 HNS Convention is based on the same principles that govern international conventions on civil liability for oil pollution damage. However, it goes much further in that it covers not only pollution damage but also the risks of fire and explosion, including loss of life or personal injury as well as loss of or damage to property. Council Decision 2002/971/EC¹ authorised Member States to ratify or accede to the 1996 HNS Convention.
4. A lack of ratifications meant that the HNS Convention was failing to come into force and as a result, the Protocol of 2010 was developed under the auspices of the International Maritime Organization ('IMO') to address practical problems that had prevented many States from ratifying the 1996 HNS Convention.
5. The Protocol of 2010 has the effect of replacing the 1996 HNS Convention and parts of it fall under the exclusive competence of the Union in the area of maritime transport. Therefore, Member States need to be authorised to be able to ratify or accede to the Protocol of 2010.
6. As is the case with the 1996 HNS Convention, the Protocol of 2010 contains provisions that affect Union secondary legislation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Those matters are covered by a separate proposal for a Council decision to be adopted in parallel to this proposal.

WORK WITHIN THE COUNCIL

7. The proposal was examined by the Shipping Working Party at several meetings during the Luxembourg Presidency (22 July, 2, 7, 25 and 30 September, 14 October 2015). At its meeting on 14 October, the Shipping Working Party agreed on the substance of the proposal, but took note of several remaining reservations by the Commission.

¹ 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) (OJ L 337, 13.12.2002, p. 55).

COMMISSION RESERVATIONS

8. At working party level, the Commission representatives expressed reservations with respect to the following provisions in the draft Council Decision:
- the legal basis (which has been changed from environment, Article 192 TFEU, to maritime transport, Article 100(2) TFEU);
 - recital 1 (the Commission considers that the text in its original proposal should be left unchanged, given that it is a copy of the corresponding text in Decision 2002/971/EC);
 - recital 6 (the Commission disagrees with the deletion of recitals 6, 7, 8 and 9 in its original proposal, explaining Union competence, and their replacement by the current recital 6; in particular, it disagrees with the deletion of recital 8 in its original proposal as it considers that that recital explained an important feature of the 2010 HNS Convention and its links to Union law, which, in the view of the Commission, is not disputed by the partial exclusive Union competence view expressed in Council);
 - recital 12 (the Commission disagrees with the deletion of the reference to Member States' best efforts, in a spirit of sincere cooperation, to achieve the accession of the Union to the Protocol of 2010);
 - recital 15 (the Commission considers that the words "acting jointly in the interest of the Union" should be added);
 - recital 15 and Article 1 (the Commission disagrees with the addition of the words "for the parts falling under the exclusive competence of the Union"; it is the view of the Commission that the Protocol of 2010 falls entirely under Union competence);
 - Article 2(1) (the original Commission proposal contains an obligation of result for the Member States to ratify or accede to the Protocol of 2010 within a fixed time frame. The Commission considers that – taking into account the context of the proposal – such obligation of result is the right approach; it does not agree with an alternative reformulation that would make the obligation to ratify the Protocol into an obligation of "best efforts" only).

OTHER RESERVATIONS

9. The United Kingdom maintains a parliamentary scrutiny reservation.

CONCLUSION

10. In the light of the above, the Permanent Representatives Committee/Council is invited to

- agree in principle on the text of the draft Council Decision as set out in document 13806/15², prepared by the legal-linguistic experts; and
- decide to forward the draft Council Decision to the European Parliament for its consent.

² This text should be submitted together with the text of the parallel proposal revised by the legal-linguistic experts, as set out in document 14112/15, to COREPER/Council on the same dates.