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Subject: COUNCIL DECISION on the ratification and accession by Member States, in the interest of the European 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 regard to the aspects related to judicial cooperation in civil matters

COUNCIL DECISION (EU) 2015/...

of

**on the ratification and accession by Member States,
in the interest of the European 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 regard to the aspects related to judicial cooperation in civil matters**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81,
in conjunction with point (a)(v) of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

¹ OJ

Whereas:

- (1) 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') aims to ensure adequate, prompt and effective compensation of persons who suffer damage caused by spills of hazardous and noxious substances, when carried by sea. The 1996 HNS Convention filled a significant gap in the international regulation of liability in the context of maritime transport.
- (2) In 2002, the Council adopted Decision 2002/971/EC¹. In accordance with that Decision, Member States were to take the necessary steps to ratify or accede to the 1996 HNS Convention, within a reasonable time and, if possible, before 30 June 2006. Four Member States have subsequently ratified that Convention. The 1996 HNS Convention has not entered into force.
- (3) The 1996 HNS Convention has been amended by the Protocol of 2010 to the 1996 HNS Convention ('Protocol of 2010'). Pursuant to Article 2 and Article 18(1) of the Protocol of 2010, the 1996 HNS Convention and the Protocol of 2010 are to be read, interpreted and applied together as one, single instrument, as between the parties to the Protocol of 2010.

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).

- (4) A text consolidating the 1996 HNS Convention and the Protocol of 2010 ('2010 HNS Convention') was prepared by the International Maritime Organization ('IMO') Secretariat and approved by the IMO Legal Committee at its 98th meeting. The 2010 HNS Convention is not an instrument open to signature or ratification. The 2010 HNS Convention will take effect once the Protocol of 2010 enters into force in Member States.
- (5) In accordance with Article 20(8) of the Protocol of 2010, the expression of consent by a State to be bound by the Protocol of 2010 nullifies any prior expression of consent by that State to be bound by the 1996 HNS Convention. As a result, States that are Contracting Parties to the 1996 HNS Convention will cease to be so the moment they express their consent to be bound by the Protocol of 2010 in accordance with Article 20, and in particular paragraphs (2), (3) and (4) thereof, of that Protocol.
- (6) As was the case with its predecessor, the 2010 HNS Convention is particularly important for the interests of the Union and its Member States, as it provides for improved protection of the victims of damage in connection with the carriage of HNS by sea, including in the context of environmental damage, in line with the 1982 United Nations Convention on the Law of the Sea.

- (7) In order for States to become Contracting Parties to the Protocol of 2010, and thereby to the 2010 HNS Convention, they have to submit to the Secretary-General of the IMO, at the same time as their instrument of consent, relevant data on the total quantities of contributing cargo under the 2010 HNS Convention ('HNS contributing cargo') during the preceding calendar year, in accordance with Article 20(4) thereof. For that purpose, States are required to set up a system for the reporting of HNS contributing cargo prior to expressing their consent to be bound by the Protocol of 2010.
- (8) Articles 38, 39 and 40 of the 2010 HNS Convention affect Union secondary legislation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as laid down in Regulation (EU) No 1215/2012 of the European Parliament and of the Council¹.
- (9) The Union therefore has exclusive competence in relation to Articles 38, 39 and 40 of the 2010 HNS Convention inasmuch as that Convention affects the rules laid down in Regulation (EU) No 1215/2012.
- (10) The exchange of best practices among Member States on the setting up of the system for the reporting of HNS contributing cargo could facilitate the efforts of Member States in developing such a reporting system.

¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

- (11) As was the case with the 1996 HNS Convention, in the absence of a regional economic integration organisation ('REIO') clause only sovereign States may be party to the Protocol of 2010. Therefore, it is not possible for the Union to ratify or accede to the Protocol of 2010, and thereby to the 2010 HNS Convention.
- (12) The ratification of the Protocol of 2010 by all Member States within a given timeframe should ensure a level playing field within the Union for all actors concerned by the application of the 2010 HNS Convention.
- (13) Taking into account the international nature of the HNS regime, a global level playing field for all actors concerned by the application of the 2010 HNS Convention should be aimed for. For that reason, there is a need for global coverage of the Protocol of 2010.
- (14) Member States should, therefore, be authorised to ratify or accede to, as appropriate, the Protocol of 2010 with regard to the aspects related to judicial cooperation in civil matters for which the Union has exclusive competence. The provisions of the 2010 HNS Convention falling within the competence conferred upon the Union other than the provisions related to judicial cooperation in civil matters are to be the subject of a Decision adopted in parallel to this Decision.
- (15) When ratifying or acceding to the Protocol of 2010, Member States should make a declaration on the recognition and enforcement of judgments falling within the scope of the 2010 HNS Convention.

- (16) The United Kingdom and Ireland are bound by Regulation (EU) No 1215/2012 and are therefore taking part in the adoption and application of this Decision.
- (17) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

Member States are hereby authorised to ratify or accede to, as appropriate, the Protocol of 2010 in the interest of the Union with regard to the aspects related to judicial cooperation in civil matters for which the Union has exclusive competence, subject to the conditions laid down in this Decision.

Article 2

1. Member States shall endeavour to take the necessary steps to deposit the instruments of ratification of, or accession to, the Protocol of 2010 within a reasonable time and, if possible, by ...*.
2. Member States shall inform each other and the Council and the Commission in an appropriate manner when the system for the reporting of HNS contributing cargo becomes operational.
3. Member States shall seek to exchange best practices, in particular on the system for the reporting of HNS contributing cargo under the Protocol of 2010.

Article 3

When ratifying or acceding to the Protocol of 2010, Member States shall also deposit the Declaration set out in the Annex to this Decision.

* OJ: Please insert date: four years after the date of entry into force of this Decision.

Article 4

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

Article 5

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the Council

The President

ANNEX

Declaration to be deposited by Member States when ratifying or acceding to the Protocol of 2010, in accordance with Article 3:

"Judgments on matters covered by the Convention as amended by the Protocol of 2010, when given by a court of ...¹, shall be recognised and enforced in ...² in accordance with the relevant European Union rules on the subject³.

Judgments on matters covered by the Convention as amended by the Protocol of 2010, when given by a court of the Kingdom of Denmark, shall be recognised and enforced in ...⁴ in accordance with the 2005 Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁵.

Judgments on matters covered by the Convention as amended by the Protocol of 2010, when given by a court of a third State bound by the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007⁶, shall be recognised and enforced in ...⁷ in accordance with that Convention."

¹ All Member States of the European Union, with the exception of the Member State making the Declaration and Denmark.

² The Member State making the Declaration.

³ At present, these rules are laid down in Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

⁴ The Member State making the Declaration.

⁵ OJ L 299, 16.11.2005, p. 62.

⁶ OJ L 339, 21.12.2007, p. 3.

⁷ The Member State making the Declaration.