



Council of the
European Union

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Subject: Recommendation from the Commission to the Council in order to authorise certain Member States, on behalf of the European Community, to open negotiations for an agreement on liability arising from environmental emergencies to be annexed to the Protocol on environmental protection to the Antarctic Treaty

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



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THE EUROPEAN UNION**

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**JUSTCIV 68
ENV 251**

"I/A" ITEM NOTE

from : Presidency

to : Committee on Civil Law Matters (General Questions)

No. Cion prop. : 7979/04 JUSTCIV 54 ENV 209 (RESTREINT UE)

Subject : Recommendation from the Commission to the Council in order to authorise certain Member States, on behalf of the European Community, to open negotiations for an agreement on liability arising from environmental emergencies to be annexed to the Protocol on environmental protection to the Antarctic Treaty

1. On 31 March 2004, the Commission submitted to the Council a Recommendation in order to authorise certain Member States, on behalf of the European Community, to open negotiations for an agreement on liability arising from environmental emergencies to be annexed to the Protocol on environmental protection to the Antarctic Treaty.
2. The draft Recommendation was considered by the Committee on Civil Law Matters (General Questions) on 31 March 2004 . Taking into account all the comments made by delegations, the Presidency is submitting a revised text for a mandate, which is set out in the Annex to this document.

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3. It appears that the draft Protocol on Environmental protection to the Antarctic Treaty will affect Community legislation (Regulation (EC) n° 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters).
4. At this stage it appears that not all areas to be covered by the future Protocol fall within the exclusive competence of the European Community. The future Protocol should thus be a mixed-type agreement.
5. It is recalled that, in accordance with Article 10 of the Treaty establishing the European Community, Member States shall take all appropriate measures to ensure the fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.
6. The United Kingdom and Ireland will take part in the adoption and application of this Decision.
7. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Decision, and is not bound by it or subject to its application.

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8. In this context, Coreper/Council is invited to:
- (a) authorise the Member States which are also Consultative Parties to the Antarctic Treaty to negotiate, on behalf and in the interest of the Community, provisions that fall within the exclusive competence of the Community in the context of the negotiations on an agreement on liability arising from environmental emergencies to be annexed to the Protocol on environmental protection to the Antarctic Treaty;
 - (b) encourage the Member States which are non-Consultative Parties to the Antarctic Treaty, but which would attend relevant meetings, to co-operate with the Member States that are Consultative Parties, as and when necessary and appropriate, to further the objectives pursued by the Community in these negotiations, and;
 - (c) adopt the negotiating directives as set out in the Annex;

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Negotiating Directives

1. The Member States involved shall ensure that the Community interests are safeguarded in the Agreement on liability arising from environmental emergencies to be annexed to the Protocol on environmental protection to the Antarctic Treaty to the extent such interests are involved.
2. The Member States involved shall, where necessary, ensure that the regime on jurisdiction, and on recognition and enforcement of judgments, as laid down in Council Regulation (EC) No 44/2001, shall continue to apply as far as possible. To that end, those Member States shall use best endeavours to negotiate a disconnection clause to be inserted in the agreement under discussion.
3. The Member States involved shall report to the Council and to the Commission on the outcome of the relevant aspects of the negotiations and, where appropriate, on any relevant problem that may arise during the negotiations.

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