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; Protocol of 2010: ratification and accession by Member States

2015/0135(NLE) - 27/03/2017 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Pavel SVOBODA (EPP, CZ) on the draft 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 the exception of aspects related to judicial cooperation in civil matters.

The committee recommended the European Parliament to **give its consent** to 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 the exception of the aspects related to judicial cooperation in civil matters.

In a short justification accompanying the draft recommendation, it was recalled that in view of the substantial discrepancies between the draft Council decision and the original proposal, the European Parliament adopted, on 8 June 2016, an **interim resolution** with recommendations for modification of the said draft Council Decision. The aim being to work towards a positive outcome with the Council and the Commission that would ensure the uniformity, integrity and effectiveness of Union law as well as the fundamental principle of conferral of EU competences.

The **main discrepancies** between the draft Council decision and the Commission proposal concerned in particular:

- the extent of exclusive Union competence pursuant to Article 3(2) TFEU;
- the appropriate legal basis for the Council Decision excluding civil justice cooperation matters, namely either Article 192 TFEU, the main provision on environmental liability, or Article 100(2), a transport provision, in conjunction with Article 218(6) TFEU;
- the overlap between the 2010 HNS Convention on the one hand and the Environmental Liability Directive (“ELD”) on the other hand;
- the lack, in the draft Council decision, of binding timeframes and clear obligations for Member States to ratify or accede to the Convention.

The Committee on Legal Affairs considered of its own motion the change in the legal basis of the draft Council Decision excluding matters of civil justice cooperation and concluded that a triple legal basis (Articles 100(2), 192(1) and 218(6)(a)(v) of the TFEU) was the most appropriate solution.

The Commission welcomed the adoption by Parliament of this resolution and confirmed that it would have been ready to accept a compromise solution on the legal basis of the proposal and an extended

reasonable timeframe for ratification of the 2010 HNS Convention. The Council took note of Parliament's resolution but found that there was **no scope to reopen the discussion** on the text of the draft Council Decision, since it fell under the consent and not the co-decision procedure.

In view of the need to promote an international regime to ensure the uniform application of rules on liability and compensation in connection with accidents caused by ships carrying HNS at sea across the EU, the rapporteur recommended that Parliament consent to the ratification and accession by Member States to the Protocol of 2010 to the HNS Convention.