Carriage of hazardous substances by sea: liability and compensation for damage, HNS Convention

2001/0272(CNS) - 19/11/2001 - Legislative proposal

PURPOSE: To secure EU exclusive responsibility over Article 38, 39 and 40 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, the HNS Convention. CONTENT: The HNS Convention was adopted in 1996 with the specific aim of establishing liability and compensation for pollution damage caused by a great variety of substances, including gases and chemicals, when carried by sea. To date only Russia has ratified the Convention and as a result the Convention is yet to enter into force. Chapter IV of the HNS Convention covers provisions concerning the jurisdiction, recognition and enforcement of judgement relating to the application of the Convention. Since 1996 however, when the Convention was first negotiated, the European Union has implemented Regulation 44/2001 which sets out common rules on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. It is a Regulation which binds all EU Member States bar Denmark. Importantly, Council Regulation 44/2001 awards the EU exclusive responsibility for all matters pertaining to jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. In light of this only the Community has the right to negotiate, conclude and fulfil the international commitments set up by the Convention. Thus a legislative anomaly between the Convention and European Union exists. The purpose of this proposal for a Council Decisions is to authorise ratification of the Convention, subject to a reservation, whereby Member States undertake to apply Regulation 44/2001 in their mutual relations. The reservation, listed in the Decision should read as follows: "Judgements referred to in Article 40 of the Convention shall, when given by a Court of a Member State of the European Community subject to Community rules in this area, be recognised and enforce in another Member State of the European Community according to such Community rules." Whilst Denmark would not be bound by such a reservation, Article 10 of the Treaty establishing the European Community would mean that Denmark has a duty to consult on this matter with other Member States in the Council.