Marine pollution by ships: civil liability for bunker oil pollution damage, 2001 Bunkers Convention

2001/0271(CNS) - 19/11/2001 - Legislative proposal

PURPOSE: To ensure EU exclusive responsibility over Articles 9 and 10 of the International Convention on Civil Liability for Bunker Oil Pollution Damage CONTENT: In March 2001 the International Convention on Civil Liability for Bunker Oil Pollution Damage was signed in London. The signing of the so-called "Bunker's Convention" is significant in that is fills a gap in the international regulation of marine pollution liability by ensuring that all vessels over 1000 gross tonnage must hold adequate insurance cover. Its provisions on the right of direct action allows a claim for compensation relating to pollution damage can be brought directly against the insurer. It appears, nevertheless that a legislative gap regarding exclusive responsibility for aspects of the Convention have emerged. Negotiators at the Convention noticed, unfortunately at a very late stage only, that Articles 9 and 10 of the Convention relating to provisions on the jurisdiction, recognition and enforcement of judgments is a matter exclusive to the EU and not the Member States. Jurisdiction, recognition and enforcement of judgements are covered by EU Regulation 44/2001 and has been devised to ensure that such areas remain the exclusive responsibility of the European Union. All Member States, other than Denmark, are bound by the provisions of Regulation 44/2001. As such, the European Union should have become a contracting party to the Bunker's Convention. Unfortunately, and in spite of, last minute attempts to find a co-ordinated position on this matter, it was too late to change the wording of the Convention. Renegotiation and/or revision of the Bunker's Convention to take account of this gap is unlikely in the foreseeable future. Accepting that the speedy ratification of the Bunker's Convention is of utmost urgency a compromise solution has been sought and found. Bearing in mind the unique problems posed by the failure to ensure the Commission become a contracting party to the Convention, a Council decision exceptionally authorising ratification, subject to a reservation, is proposed. The Council Decision would thus include the following statement: "Member States of the European Community subject to Community rules in this area shall apply Community rules on jurisdiction in their mutual relation insofar as the pollution damage is caused in a geographical area referred to in Article 2 of the Convention of a Member State of the European Community and the defendant is domiciled in a Member State of the European Community. Judgements referred to in Article 10.1 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 enforced in another Member State of the European Community according to such Community rules." Member States would thus be able to ratify the Convention whilst committing themselves to apply Regulation 44/2001 in their mutual relations. This measure, it is stressed, should be viewed as an interim solution only until such time that the Convention can be revised. Thus, in matters relating to the civil liability provisions regarding oil bunkers, Regulation 44/2001 shall continue to regulate the mutual relations between Member States.