

## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 8 March 2004

**authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to ratify, in the interest of the European Community, the Protocol amending that Convention, or to accede to it**

(2004/294/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c), Article 67, in conjunction with the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the assent of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) The Protocol amending the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy, amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereinafter referred to as the Paris Convention) was negotiated with a view to improving compensation for victims of damage caused by nuclear accidents. It provides for increasing liability amounts and extending the system of nuclear third party liability to environmental damage.
- (2) In accordance with the Council's negotiating directives of 13 September 2002, the Commission negotiated the Protocol of amendment to the Paris Convention for matters falling within the jurisdiction of the European Community. However, the Council's negotiating directives did not provide for negotiating a clause allowing the accession of the Community to the Protocol.
- (3) The Protocol was finally adopted by the Contracting Parties to the Paris Convention. The text of the Protocol complies with the Council's negotiating directives.

- (4) The Community has exclusive jurisdiction with regard to amending Article 13 of the Paris Convention where such amendment would affect the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(2)</sup>. The Member States retain their jurisdiction for matters covered by the Protocol which do not affect Community law. Given the subject matter and the aim of the Protocol of amendment, acceptance of the provisions of the Protocol which come under Community jurisdiction cannot be dissociated from the provisions which come under the jurisdiction of the Member States.

- (5) The Protocol of amendment to the Paris Convention is particularly important, in the light of the interests of the Community and its Member States, because it improves compensation for damage caused by nuclear accidents.
- (6) The Protocol was signed by the Member States which are Contracting Parties to the Paris Convention, on behalf of the European Community, on 12 February 2004, subject to its possible conclusion at a later date, in accordance with Council Decision 2003/882/EC of <sup>(3)</sup>.
- (7) The Paris Convention and its Protocol of amendment are not open to participation by regional organisations. As a result, the Community is not in a position to sign or ratify the Protocol, or to accede to it. Under these circumstances, it is justified, on a very exceptional basis, that the Member States ratify or accede to the Protocol in the interest of the Community.

<sup>(1)</sup> Assent of 26 February 2004 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 12, 16.1.2001, p. 1.

<sup>(3)</sup> OJ L 338, 23.12.2003, p. 32.

- (8) However, three of the Member States, namely Austria, Ireland and Luxembourg, are not Parties to the Paris Convention. Given that the Protocol amends the Paris Convention, that Regulation (EC) No 44/2001 authorises the Member States bound by that Convention to continue to apply the rules on jurisdiction provided for in it and that the Protocol does not substantially amend the rules on jurisdiction of the Convention, it is objectively justified that this Decision should be addressed only to those Member States that are Parties to the Paris Convention. Accordingly, Austria, Ireland and Luxembourg will continue to base themselves on the Community rules contained in Regulation (EC) No 44/2001 and to apply them in the area covered by the Paris Convention and by the Protocol amending that Convention.
- (9) The Member States which are Contracting Parties to the Paris Convention, should therefore ratify the Protocol amending the Paris Convention, or accede to it, in the interest of the European Community, subject to the conditions laid down in this Decision. Such ratification or accession is without prejudice to the position of Austria, Ireland and Luxembourg.
- (10) Consequently, the provisions of the Protocol, as regards the European Community, will be applied only by those Member States which are currently Contracting Parties to the Paris Convention and is without prejudice to the position of Austria, Ireland and Luxembourg.
- (11) The United Kingdom and Ireland are bound by Council Regulation (EC) No 44/2001 and are therefore taking part in the adoption of this Decision.
- (12) 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,

HAS ADOPTED THIS DECISION:

*Article 1*

1. Without prejudice to the Community's powers, the Member States which are currently Contracting Parties to the Paris Convention shall ratify the Protocol amending the Paris

Convention, or accede to it, in the interest of the European Community. Such ratification or accession shall be without prejudice to the position of Austria, Ireland and Luxembourg.

2. The text of the Protocol amending the Paris Convention is attached to this Decision.

3. For the purposes of this Decision, the term 'Member State' shall mean all Member States with the exception of Austria, Denmark, Ireland and Luxembourg.

*Article 2*

1. Member States which are Contracting Parties to the Paris Convention shall take the necessary steps to deposit simultaneously their instruments of ratification of the Protocol, or accession to it, with the Secretary-General of the Organisation for Economic Cooperation and Development within a reasonable time and, if possible, before 31 December 2006.

2. Member States which are Contracting Parties to the Paris Convention shall exchange information with the Commission within the Council before 1 July 2006 on the date on which they expect their parliamentary procedures required for ratification or accession to be completed. The date and arrangements for simultaneous deposit shall be determined on that basis.

*Article 3*

When ratifying or acceding to the Protocol amending the Paris Convention, Member States shall inform the Secretary-General of the Organisation for Economic Cooperation and Development in writing that ratification or accession has taken place in accordance with this Decision.

*Article 4*

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 8 March 2004.

*For the Council*

*The President*

D. AHERN