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## **REPORT**

on the proposal for a Council decision authorising the Member States to ratify in the interest of the European Community the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the 'HNS Convention') (COM(2001) 674 – C5-0646/2001 – 2001/0272(CNS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Paolo Bartolozzi

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

By letter of 6 December 2001 the Council consulted Parliament, pursuant to Article 67(1) of the EC Treaty and Article 300 of the EC Treaty, on the proposal for a Council decision authorising the Member States to ratify in the interest of the European Community the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the 'HNS Convention') (COM(2001) 674 – 2001/0272(CNS)).

At the sitting of 10 December 2001 the President of Parliament announced that she had referred this proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy and the Committee on Regional Policy, Transport and Tourism for their opinions (C5-0646/2001).

The Committee on Legal Affairs and the Internal Market appointed Paolo Bartolozzi rapporteur at its meeting of 24 January 2002.

It considered the Commission proposal and draft report at its meetings of 16 April, 13 May and 28 May 2002.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Willi Rothley and Bill Miller, vice-chairmen, Paolo Bartolozzi, rapporteur, Maria Berger, Philip Charles Bradbourn (for Malcolm Harbour), Carlos Carnero González for François Zimeray pursuant to Rule 153(2), Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Othmar Karas (for Nicole Fontaine), Piia-Noora Kauppi (for Stefano Zappalà), Kurt Lechner, Klaus-Heiner Lehne, Neil McCormick, Helmuth Markov (for Alain Krivine pursuant to Rule 153(2), Arlene McCarthy, Manuel Medina Ortega, Elena Ornella Paciotti (for Carlos Candal), Astrid Thors (for Diana Wallis), Marianne L.P. Thyssen, Rijk van Dam (for Ole Krarup), Rainer Wieland and Joachim Wuermeling.

The Committee on the Environment, Public Health and Consumer Policy and the Committee on Regional Policy, Transport and Tourism decided on 19 December 2001 and 21 February 2002 not to deliver opinions.

The report was tabled on 29 May 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

**Proposal for a Council decision authorising the Member States to ratify in the interest of the European Community the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the ‘HNS Convention’) (COM(2001) 674 – C5-0646/2001 – 2001/0272(CNS))**

The proposal is approved.

## DRAFT LEGISLATIVE RESOLUTION

**European Parliament legislative resolution on the proposal for a Council decision authorising the Member States to ratify in the interest of the European Community the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the ‘HNS Convention’) (COM(2001) 674 – C5-0646/2001 – 2001/0272(CNS))**

### **(Consultation procedure)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2001) 674<sup>1</sup>),
  - having regard to Article 61(c) of the EC Treaty,
  - having been consulted by the Council pursuant to Articles 67(1) and 300 of the EC Treaty (C5-0646/2001),
  - having regard to Rule 67 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0204/2002),
1. Approves the Commission proposal;
  2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  3. Calls for the conciliation procedure to be initiated should the Council intend to depart from the text approved by Parliament;
  4. Asks to be consulted again should the Council intend to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 51, 26.2.2002, p. 370(E).

## EXPLANATORY STATEMENT

### 1. Background

The HNS (hazardous and noxious substances) Convention lays down liability and compensation arrangements applying to damage caused by various noxious substances. At present, only oil pollution damage is eligible for compensation under the IOPC Convention (International Oil Pollution Convention). The HNS Convention was adopted in 1996 under the auspices of the IMO (International Maritime Organisation, the London-based specialised United Nations agency responsible for safety at sea and protection of the marine environment). Although it has been adopted, it has not entered into force, and only Russia has ratified it.

There are no specific Community rules governing liability for damage resulting from pollution caused by hazardous and noxious substances.

The HNS Convention is based on a compensation system covering the liability of registered shipowners (strict liability). It requires them to have liability insurance and entitles an injured party to take direct action against an insurer. In addition, the HNS Fund (financed by companies), to be set up under the Convention, will be used to compensate victims when a shipowner's insurance is insufficient to cover the damage.

### 2. Proposal for a Council decision

The scope of the proposal for a decision in question is clearly defined. However, the Convention cannot be ratified by the Member States without a reservation, because it contains provisions that will affect rules laid down by Community law. This applies in particular to the relationship to Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>1</sup>, the subject of the Wallis report, which the House adopted on 21 September 2000.

With the exception of Denmark (whose dealings with the other Member States are regulated by the 1968 Brussels Convention), all the Member States are obliged to apply the above Regulation to matters relating to jurisdiction and the recognition of judgments. The rules governing jurisdiction are based in the first place on the defendant's domicile and stipulate that judgments handed down in one Member State must be recognised and enforced in the other Member States, without a requirement to follow any special procedure.

It is apparently the case that the Community alone is empowered to negotiate, conclude, and fulfil international commitments<sup>2</sup>. To enable the Member States to ratify the Convention, therefore, the Council decision being proposed authorises them to do so, albeit subject to a reservation.

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<sup>1</sup> OJ L 12, 16.1.2001.

<sup>2</sup> According to the case-law of the Court of Justice, Member States lose the right to enter into obligations in relation to non-member countries as and when common rules come into being, if these could be affected by such obligations.

An exception can legitimately be made to the general application of Council Regulation (EC) No 44/2001. It seems inevitable that Articles 38 and 39 of the HNS Convention will apply in relation to, and consequently take precedence over, that Regulation. However, Article 40 of the Convention will not apply to the Member States, because the proposal for a Council decision contains an express reservation to that effect.

### **3. Danish opt-out**

Since it is not bound by or subject to the application of Regulation (EC) No 44/2001, Denmark is free to decide whether to approve the HNS Convention<sup>1</sup>.

### **4. Conclusions**

We agree with the Commission that the Convention needs to be ratified because it could plainly do much to strengthen the international rules on liability in the event of environmental damage. Parliament should therefore call on the Member States to ratify the 1996 International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea so as to enable this instrument to enter into force and apply and to fill the gap in the existing rules governing liability applying to carriage by sea.

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<sup>1</sup> However, the duty of cooperation set out in Article 10 of the EC Treaty implies in this instance that Denmark will be required to consult with the other Member States in the Council.