



EUROPEAN
COMMISSION

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Proposal for a

COUNCIL DECISION

authorising Member States to sign, ratify or accede to the Cape Town Agreement of 2012 on the Implementation of the provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Introduction

The Torremolinos International Convention for the Safety of Fishing Vessels 1977 was amended by its 1993 Protocol, which updated the provisions and revised the obligatory application of the main chapters to vessels of 45 metres in length and over, leaving it up to a regional decision for an application to vessels of 24 metres in length and over. Neither the original convention nor the 1993 protocol have entered into force, as the necessary minimum requirements in terms of ratification were never reached.

A Diplomatic Conference was convened in Cape Town, South Africa by the International Maritime Organization (IMO) between 9-11 October 2012 to consider and adopt an Agreement on the implementation of the Torremolinos Protocol in a major effort on the part of the IMO to facilitate the entry into force of the 1993 Protocol.

The Diplomatic Conference has resulted in the adoption of an Agreement amending the Torremolinos Protocol of 1993, entitled the "Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977" (hereinafter referred to as "the Agreement").

1.2. EU competence and ramifications

In accordance with the rules on external competence as laid down in Article 3 (2) Treaty on the Functioning of the European Union (TFEU), the amendments to the 1993 Torremolinos Protocol come under exclusive Union competence, as the Protocol has been transposed into EU legislation by Council Directive 97/70/EC of 11 December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over¹.

The European Union cannot become a party to the draft Agreement, as the current draft, as approved by the International Maritime Organisation (IMO) Maritime Safety Committee, does not include a REIO (Regional Economic Integration Organisation) clause. However as the Agreement concerns a matter of exclusive EU competence, Member States are not in a position to decide autonomously on the signature and ratification of the Agreement. They can only do it, in the interest of the Union, after authorization by the Council and consent of the European Parliament upon a proposal by the Commission.

1.3. Details of the Agreement

The Agreement foresees the entry into force of the Torremolinos Protocol 12 months after the date on which not less than 22 States the aggregate number of whose fishing vessels of 24 m in length and over operating on the high seas is not less than 3,600 have expressed their consent to be bound by it. This is a considerable reduction in the fishing vessel threshold relative to the 1993 Protocol, which now has a realistic prospect of being met.

The Agreement will be open for signature at IMO Headquarters from 11 February 2013 to 10 February 2014 and thereafter remain open for accession. It is expected that, as has been supported by the EU Member States during the negotiations leading to the agreement, the use of the databases held by the Food and Agriculture Organisation (FAO) will provide an objective basis for the estimation of the fleets flying the flag of the ratifying parties, and hence facilitate the early entry into force of the Agreement.

¹ OJ L 34, 9.2.1998, p. 1

Scope: the Agreement's provisions apply to new vessels, unless specifically provided for otherwise. Certain flexibilities have been added through the Agreement to facilitate wide acceptance. Administrations may, in accordance with a plan, progressively implement the provisions of chapter IX (radiocommunications) over a period of no more than 10 years; and the provisions of chapters VII (life-saving appliances and arrangements), VIII (emergency procedures, musters and drills) and X (shipborne navigational equipment and arrangements) over a period of no more than five years.

Exemptions: the Agreement allows an Administration to exempt any vessel entitled to fly its flag from any of the regulatory requirements, if it considers such application to be unreasonable and impracticable in view of the type of vessel, the weather conditions and the absence of general navigational hazards, under the following conditions:

- (a) the vessel complies with safety requirements which, in the opinion of that Administration, are adequate for the service for which it is intended and are such as to ensure the overall safety of the vessel and persons on board;
- (b) the vessel is operating solely in:
 - (i) a common fishing zone established in adjoining marine areas under the jurisdiction of neighbouring States which have established that zone, in respect of vessels entitled to fly their flags, only to the extent and under the conditions that those States agree, in accordance with international law, to establish in this regard; or
 - (ii) the exclusive economic zone of the State of the flag it is entitled to fly, or, if that State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured; or
 - (iii) the exclusive economic zone, a marine area under the jurisdiction of another State, or a common fishing zone, in accordance with an agreement between the States concerned in accordance with international law, only to the extent and under the conditions that those States agree to establish in this regard; and
- (c) the Administration notifies the IMO Secretary-General of the terms and conditions on which the exemption is granted under this paragraph.

Surveys and Certificates: the International Fishing Vessel Safety Certificate is amended to state it is issued under the provisions of the Cape Town Agreement of 2012 on the Implementation of the Provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.

The **Survey regime** is amended to reflect the timeframe used for cargo and passenger vessels, namely, an annual survey, a compulsory intermediate survey between years two and three and a renewal survey after no more than five years. Grace periods following the survey deadline are also harmonised. Additionally within the Agreement there is a provision for an Administration to exempt a ship from the annual survey, if its application is deemed to be unreasonable or impracticable.

Overall the new survey regime is tighter: the annual and periodic surveys are more comprehensive; issues formerly to be checked within the discretionary intermediate surveys are included in the mandatory periodic survey; additional surveys on repairs are no longer discretionary. The new maximum interval of 5, not 4 years for a renewal survey reflects the

fact that a 5-year gap was already an option under the current regime. The grace periods following expiry of a certificate now also reflect the harmonised periods for certificates issued to other vessels under SOLAS, with the main grace period being reduced from 5 to 3 months.

Neither the original Torremolinos Convention, the 1993 Protocol nor the 2012 Agreement exclude the formulation of reservations or declarations by the Parties.

1.4. Implications for Directive 97/70/EC

Article 3(5) of the Torremolinos Protocol remains unchanged and permits the development of regional arrangements thus ensuring the continued implementation of a uniform and coherent safety regime for all fishing vessels operating in EU waters. In addition, the Agreement represents a minimum set of safety rules, thus allowing the EU to continue to apply the original rules under the Torremolinos Protocol.

Two issues may require action to safeguard certain current EU norms: firstly, the exclusion of the wider general exemptions and the annual survey exemption introduced by the Agreement; and secondly, updating the referencing within the Directive and its Annexes. Articles 8 and 9 of Directive 97/70/EC in conjunction with Article 5 of Regulation (EC) 2099/2002² provide that both issues can be resolved by amending the Directive in accordance with a regulatory committee procedure with scrutiny.

Directive 97/70/EC applies the provisions of the Torremolinos Protocol not only to EU Member State flagged fishing vessels, but also to fishing vessels flying the flag of third states operating in the internal waters or territorial seas of a Member State or landing their catch in a port of a Member State in accordance with the general rules of international law. The application of the Torremolinos Protocol provisions to all these groups of fishing vessels should continue. For that reason the Commission considers that EU Member States, when signing and agreeing to be bound by the Agreement, should issue a declaration to the effect that the Torremolinos Protocol provisions will continue to apply to these two groups of third country vessels in accordance with Union law as currently in force.

As the requirements of the current Directive will essentially be maintained, the cost implications for EU fishing vessels are negligible. While surveys will be more comprehensive, they will be carried out over a longer period of time.

1.5. Conclusion

The adoption and entry into force of global safety rules for fishing vessels is a matter of utmost importance in a sector plagued by a particularly high number of accidents resulting in over 24000 fatalities every year³.

Thanks to the flexibilities introduced by the Agreement, the latter is expected to be instrumental in finally achieving the objective of the entry into force of the 1993 Torremolinos Protocol. In addition, amendments to the Protocol to update its provisions can only be made once it enters into force. As Directive 97/70/EC makes reference to and implements the provisions of the 1993 Torremolinos Protocol, provisions that for the most part have not changed substantially in 20 years, the entry into force of the Agreement will then allow updating amendments for a number of requirements in the Protocol to be introduced within IMO, which can then be implemented through Directive 97/70/EC.

The Commission considers that the Agreement will thus greatly facilitate the achievement of the objectives of the Treaties as enshrined in Directive 97/70/EC. As explained in paragraph 1.4.3 above, it is however necessary to ensure that the scope of the said Directive remains

² OJ L 324, 29.11.2002, p.1

³ ILO (2001) Report on safety and health in the fishing industry

unaffected, by requiring the Member States to issue appropriate declarations when signing and agreeing to be bound by the Agreement.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENT

Accession to this Agreement will not result in a change to the technical requirements for fishing vessels under the current Directive.

3. LEGAL ELEMENTS OF THE PROPOSAL

Article 1

This article authorises Member States to be bound by the current Agreement on a subject of the exclusive competence of the Union due to the impossibility for the EU to become a party of such Agreement. The Agreement sets out different options for IMO member states to express their consent to be bound and the Article reflects the different methods by which EU Member States may wish to do so.

Article 2

This article requires EU Member States to agree to be bound by the Agreement within a two year period from entry into force of this Decision. Early adherence to the Agreement by all EU Member States will allow the threshold concerning both the number of IMO member states and aggregate fleet required (22 member states and 3600 fishing vessels) to be more quickly attained. Given that the Agreement will promote an improvement in fishing vessel safety worldwide, reducing disparities in safety levels and resulting potential competitive disadvantages for EU vessels, and facilitating further updates in technical requirements within the Agreement, its early entry into force is highly desirable.

Article 3

This article sets a clear date for the entry into force of the Council Decision.

Article 4

The purpose of the Decision is to authorise the Member States to be bound by the Agreement and so the Decision is addressed to them.

4. BUDGETARY IMPLICATION

None

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) thereof, in conjunction with Article 218(5), 218(6)(a)(v) and the first subparagraph of Article 218(8) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament⁴,

Whereas:

- (1) Action by the European Union in the sector of maritime transport should aim to improve maritime safety;
- (2) The Torremolinos Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977, hereinafter referred to as the 'Torremolinos Protocol' was adopted on 2 April 1993;
- (3) Council Directive 97/70/EC⁵ setting up a harmonised safety regime for fishing vessels of 24 metres in length and over has laid down safety standards that are based upon the Torremolinos Protocol, taking as far as necessary full account of regional and local circumstances;
- (4) The Torremolinos Protocol has not entered into force, given that the necessary minimum requirements in terms of ratification have never been achieved;
- (5) In order to establish by common accord the highest practicable standards for the safety of fishing vessels that can be implemented by all the states concerned, and under the auspices of the International Maritime Organization (IMO), a draft Agreement, to be read in conjunction with the Torremolinos Protocol, was finalised at a Diplomatic Conference in Cape Town, South Africa held from 9 – 11 October 2012;
- (6) This Agreement, adopted on 11 October 2012, is entitled "the Cape Town Agreement of 2012 on the Implementation of the provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing vessels 1977" (hereinafter called "the Agreement"). The Agreement will be open for signature at IMO Headquarters from 11 February 2013 to 10 February 2014 and thereafter remain open for accession;

⁴ OJ C , , p. .

⁵ OJ L 34, 9.2.1998, p.1

- (7) The provisions of the Agreement fall under the exclusive competence of the Union concerning the safety regime of fishing vessels of 24 metres in length and over;
- (8) The European Union cannot become a party to the Agreement, as it does not include a REIO (Regional Economic Integration Organisation) clause;
- (9) It is in the interests of maritime safety and fair competition that the Agreement be now ratified or acceded to by the European Union Member States, to ensure the entry into force of the provisions of the Torremolinos Protocol. Furthermore, the entry into force of the Agreement will allow the subsequent updating of a number of provisions in the Protocol through submissions to IMO, which have, since the adoption of Directive 97/70/EC, become obsolete;
- (10) In accordance with Article 2(1) TFEU, the Council should therefore authorise Member States to sign and ratify the Agreement or to accede to it in the interests of the Union. However, in order to safeguard the current safety levels provided through Council Directive 97/70/EC, the Member States should, when signing the Agreement and depositing their instruments of ratification or accession, issue a declaration to the effect that the exemptions provided by the Agreement within its Regulations 1(6) and 3(3) in relation to annual surveys and a common fishing zone or exclusive economic zone respectively shall be excluded from application, and that third country fishing vessels of 24 meters in length and over operating in their territorial or internal waters or landing catch at their ports will be subject to the safety standards laid down in the said directive.

HAS ADOPTED THIS DECISION:

Article 1

Member States are hereby authorised to sign, sign and ratify, or accede to, as appropriate, the Cape Town Agreement of 2012 on the Implementation of the provisions of the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.

Article 2

Member States shall take the necessary steps to deposit their instruments of ratification of the Agreement or accession to it with the Secretary General of the International Maritime Organization without delay, and in any case no later than two years from the date of entry into force of this Decision.

When Member States sign, ratify or accede to the Agreement, they shall also deposit the Declaration set out in the Annex to this Decision.

Article 3

This Decision will enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

ANNEX

DECLARATION TO BE DEPOSITED BY THE MEMBER STATES UPON SIGNATURE, RATIFICATION OR ACCESSION TO THE CAPE TOWN AGREEMENT OF 2012 ON THE IMPLEMENTATION OF THE PROVISIONS OF THE TORREMOLINOS PROTOCOL OF 1993 RELATING TO THE TORREMOLINOS INTERNATIONAL CONVENTION FOR THE SAFETY OF FISHING VESSELS, 1997

As part of a regional arrangement, authorised under Article 3(5) of the Torremolinos Protocol of 1993, [*insert name of the Member State contracting party*] is bound by relevant European Union (EU) legislation (Council Directive 97/70/EC of 11 December 1997) setting up a harmonised safety regime for fishing vessels of 24 metres in length and over and consequently will apply the Torremolinos Protocol provisions to those third country flagged fishing vessels of 24 metres in length and over that operate in its internal or territorial waters or which land catch in one of its ports, in the terms laid down by the aforementioned EU legislation.

Under this regional arrangement, the exemptions provided by the Cape Town Agreement within its Regulation 1(6) in relation to annual surveys and within its Regulation 3(3) concerning a common fishing zone or exclusive economic zone shall be excluded from application.