

COUNCIL DECISION (EU) 2017/769**of 25 April 2017****on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, with the exception of the aspects related to judicial cooperation in civil matters**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 ('1996 HNS Convention') aims to ensure adequate, prompt and effective compensation of persons who suffer damage caused by spills of hazardous and noxious substances, when carried by sea. The 1996 HNS Convention filled a significant gap in the international regulation of liability in the context of maritime transport.
- (2) In 2002, the Council adopted Decision 2002/971/EC ⁽²⁾. In accordance with that Decision, Member States were to take the necessary steps to ratify or accede to the 1996 HNS Convention, within a reasonable time and, if possible, before 30 June 2006. Four Member States have subsequently ratified that Convention. The 1996 HNS Convention has not entered into force.
- (3) The 1996 HNS Convention has been amended by the Protocol of 2010 to the 1996 HNS Convention ('Protocol of 2010'). Pursuant to Article 2 and Article 18(1) of the Protocol of 2010, the 1996 HNS Convention and the Protocol of 2010 are to be read, interpreted and applied together as one, single instrument, as between the parties to the Protocol of 2010.
- (4) A text consolidating the 1996 HNS Convention and the Protocol of 2010 ('2010 HNS Convention') was prepared by the International Maritime Organization ('IMO') Secretariat and approved by the IMO Legal Committee at its 98th meeting. The 2010 HNS Convention is not an instrument open to signature or ratification. The 2010 HNS Convention will take effect once the Protocol of 2010 enters into force in Member States.
- (5) In accordance with Article 20(8) of the Protocol of 2010, the expression of consent by a State to be bound by the Protocol of 2010 nullifies any prior expression of consent by that State to be bound by the 1996 HNS Convention. As a result, States that are Contracting Parties to the 1996 HNS Convention will cease to be so the moment they express their consent to be bound by the Protocol of 2010 in accordance with Article 20, and in particular paragraphs (2), (3) and (4) thereof, of that Protocol.
- (6) Directive 2004/35/EC of the European Parliament and of the Council ⁽³⁾ aims to prevent and remedy environmental damage caused by numerous occupational activities, including the transport by sea of dangerous goods. However, it does not apply to cases of personal injury, to damage to private property or to any economic loss, and does not affect any rights of compensation for such damage. The subject matter of that Directive and of the 2010 HNS Convention therefore partially overlap, but not to a large extent. Member States retain their competence for aspects of the 2010 HNS Convention which do not affect common rules.

⁽¹⁾ Consent given on 5.4.2017 (not yet published in the Official Journal).

⁽²⁾ Council Decision 2002/971/EC of 18 November 2002 authorising the Member States, in the interest of the Community, to ratify or accede to 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) (OJ L 337, 13.12.2002, p. 55).

⁽³⁾ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

- (7) As was the case with its predecessor, the 2010 HNS Convention is particularly important for the interests of the Union and its Member States, as it provides for improved protection of the victims of damage in connection with the carriage of HNS by sea, including in the context of environmental damage, in line with the 1982 United Nations Convention on the Law of the Sea.
- (8) In order for States to become Contracting Parties to the Protocol of 2010, and thereby to the 2010 HNS Convention, they have to submit to the Secretary-General of the IMO, at the same time as their instrument of consent, relevant data on the total quantities of contributing cargo under the 2010 HNS Convention ('HNS contributing cargo') during the preceding calendar year, in accordance with Article 20(4) thereof. For that purpose, States are required to set up a system for the reporting of HNS contributing cargo prior to expressing their consent to be bound by the Protocol of 2010.
- (9) At its 100th meeting in 2013, the IMO Legal Committee endorsed Guidelines on the reporting of HNS contributing cargo, which were developed to facilitate the adoption by ratifying States of legislation on reporting prior to the entry into force of the Protocol of 2010 and to contribute to the global, uniform and effective implementation of the relevant requirements of the 2010 HNS Convention.
- (10) In order to ensure legal certainty for all relevant stakeholders, Member States should inform each other and the Council and the Commission in an appropriate manner of their systems for the reporting of HNS contributing cargo. That information could be made available in an informal manner through existing channels, such as the Council preparatory bodies.
- (11) The exchange of best practices among Member States on the setting up of the system for the reporting of HNS contributing cargo could facilitate the efforts of Member States in developing such a reporting system.
- (12) As was the case with the 1996 HNS Convention, in the absence of a regional economic integration organisation ('REIO') clause only sovereign States may be party to the Protocol of 2010. Therefore, it is not possible for the Union to ratify or accede to the Protocol of 2010, and thereby to the 2010 HNS Convention.
- (13) The ratification of the Protocol of 2010 by all Member States within a given timeframe should ensure a level playing field within the Union for all actors concerned by the application of the 2010 HNS Convention.
- (14) Taking into account the international nature of the HNS regime, a global level playing field for all actors concerned by the application of the 2010 HNS Convention should be aimed for. For that reason, there is a need for global coverage of the Protocol of 2010.
- (15) Member States should, therefore, be authorised to ratify or accede to, as appropriate, the Protocol of 2010 for the parts thereof falling under exclusive Union competence, with the exception of the aspects related to judicial cooperation in civil matters. The provisions of the 2010 HNS Convention falling within the competence conferred upon the Union in respect of judicial cooperation in civil matters are to be the subject of a Decision adopted in parallel to this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Member States are hereby authorised, for the parts falling under the exclusive competence of the Union, to ratify or accede to, as appropriate, the Protocol of 2010 in the interest of the Union, with the exception of the aspects related to judicial cooperation in civil matters, and subject to the conditions laid down in this Decision.

Article 2

1. Member States shall endeavour to take the necessary steps to deposit the instruments of ratification of, or accession to, the Protocol of 2010 within a reasonable time and, if possible, by 6 May 2021.

2. Member States shall inform each other and the Council and the Commission in an appropriate manner when the system for the reporting of HNS contributing cargo becomes operational.
3. Member States shall seek to exchange best practices, in particular on the system for the reporting of HNS contributing cargo under the Protocol of 2010.

Article 3

When ratifying or acceding to the Protocol of 2010, Member States shall inform the Secretary-General of the International Maritime Organization in writing that such ratification or accession has taken place in accordance with this Decision and Council Decision (EU) 2017/770 ⁽¹⁾.

Article 4

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

Article 5

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Luxembourg, 25 April 2017.

For the Council
The President
I. BORG

⁽¹⁾ Council Decision (EU) 2017/770 of 25 April 2017 on the ratification and accession by Member States, in the interest of the European Union, to the Protocol of 2010 to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, with regard to the aspects related to judicial cooperation in civil matters (see page 18 of this Official Journal).