



Ratification of 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996– A Matter of Urgency

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The shipping industry represented by the European Community Shipowners' Associations (ECESA), the International Chamber of Shipping (ICS) and BIMCO, is very supportive of the 2010 Protocol to the HNS Convention (the "Convention"). Since this is the last IMO convention needed to complete the comprehensive international liability and compensation regime for pollution damage from ships, the shipping industry is campaigning for its ratification and early entry into force.

The shipping industry has followed the EU legislative process very closely over the past two years. It therefore warmly welcomes the adoption of the European Parliament resolutions on 5 April 2017 (P8_TA-PROV(2017)0104; P8_TA-PROV(2017)0105). The EP now gave its consent to the draft Council Decisions authorising Member States to ratify or accede to, as appropriate, in the interests of the European Union, the Protocol of 2010 to the HNS Convention. This paves the way for the closure of the EU process through the adoption of the Council Decisions at an upcoming Council meeting.

The focus now turns on the Member States. **The shipping industry strongly encourages the Member States to take the necessary measures to ratify and accede to the 2010 Protocol to the HNS Convention soonest.** In this way, the European Union could lead by example in the ratification of this important International Convention and influence its entry into force.

Detailed Background:

The International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 has been amended by a Protocol of 2010. The two instruments are to be interpreted as one single instrument as between the parties to the Protocol of 2010. Once the Protocol of 2010 enters into force, the 1996 Convention, as amended by the Protocol, will be called: "the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010".

The 2010 International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (the '2010 HNS Convention') is an important part of the international maritime liability and compensation regime. This in particular as the carriage of HNS by sea is growing by



almost all ship types including: Container ships, chemical, liquefied natural gas (LNG) and liquefied petroleum gas (LPG) tankers.

The European and global shipping industry strongly support the Convention and urge its early entry into force.

The reasons are as follows:

1. The HNS Convention will establish an international liability and compensation regime for pollution damage from hazardous and noxious substances carried by ships. As well as the risks of fire and explosion, including loss of life, personal injury, and loss of or damage to property (HNS damage), which will provide victims (claimants) of HNS damages with compensation on a very high level (i.e. 350 million USD / 310 million Euros per incident).
2. It will create a regime of strict liability for the carrier, establish a regime of compulsory insurance as well as direct action against the carrier's insurer.
3. The regime will ensure that the costs are shared between shipowners and HNS cargo receivers.
4. The failure to enter into force is an important gap in the current successful and effective IMO framework of liability and compensation for pollution damages.

In the absence of a Regional Economic Integration Organisation ('REIO') clause in the text of the Convention or in the Protocol, it is not possible for the Union to ratify or accede to the Protocol of 2010 as only sovereign States may be party. However, since the international agreement affects areas of exclusive Union competence, Member States require authorisation to ratify or accede to it, as appropriate, with regard to the aspects for which the Union has exclusive competence. They can only do this following the authorisation of the Council and the consent of European Parliament on a proposal by the European Commission, in accordance with Article 218(6)(a) TFEU. Now that the European Parliament has given its consent, only the Council's authorisation is needed to finalise the EU process.

Closure of the EU procedure is key:

Once the Council Decisions are adopted, Member States that are ready to ratify or accede to the Convention will be able to go ahead with their processes, and this will hopefully encourage other States to follow their example.

Given the threshold required for the entry into force of the Convention (ratification by 12 IMO Member States including 4 with not less than 2 million units of gross tonnage each and the volume of contributing cargo for the general account must be at least 40 million tonnes), the ratification or accession by EU Member States could play a crucial role in facilitating the entry into force of the Convention.

Such ratifications by EU Member States will hopefully lead to a worldwide movement towards a widespread ratification of the Convention.



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