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PURPOSE: i) ratification by Member States on behalf of the 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 ii) accession by Member States to the said Protocol with the exception of aspects related to judicial cooperation in civil matters.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the adoption and entry into force of international rules on liability for non-contractual damages arising from the carriage of hazardous and noxious substances (HNS) by sea is crucial in view of the significant share HNS cargo represents in maritime freight transport worldwide.

The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, ('1996 HNS Convention') was aimed at ensuring adequate, prompt and effective compensation of persons who suffer damage caused by spills of hazardous and noxious substances, when carried by sea.

The Protocol of 2010 to the 1996 HNS Convention contained necessary amendments to address problems identified in the 1996 HNS Convention. The 2010 Protocol and the provisions of the Convention, are to be read, interpreted and applied together as one single instrument.

Neither the 1996 HNS Convention, nor the 2010 Protocol to the HNS Convention has entered into force. The latter has no contracting parties to it to this day.

The 2010 Protocol, and thereby the consolidated 2010 HNS Convention, will enter into force 18 months after the date on which at least 12 States, 4 of which with no less than 2 million units of gross tonnage each, have ratified it, and the relevant data on contributing cargo have been submitted to the IMO Secretary-General showing no less than 40 million tonnes of cargo contributing to the general HNS account received in total in those States during the preceding calendar year.

The main changes from the 1996 HNS Convention to the 2010 HNS Convention are:

- excluding packaged HNS from the definition of contributing cargo to the HNS Fund, while damage caused by packaged HNS remains covered by the two-tier system of compensation established in the Convention;
- increasing the liability limits of the ship owner for ships carrying packaged HNS in order to accommodate better the exclusion of packaged HNS as contributing cargo to the HNS Fund;
- making the physical receiver of LNG the responsible party for payment of the relevant contributions to the HNS Fund, unless there is a different agreement between the titleholder and the receiver;
- making payment of compensation by the HNS Fund in case of a covered incident conditional upon the fulfilment by the State concerned of its obligation to submit reports on contributing cargoes for all years prior to the incident

Given that issues related to judicial to judicial cooperation in civil matters do not apply to Denmark, the Council must adopt two separate decisions.

IMPACT ASSESSMENT: whilst no formal impact assessment was required, several options have been examined and weighed. The Commission considers that the conclusion of the 2010 Protocol to the HNS Convention will ensure:

- uniform application of rules on liability and compensation in connection with accidents caused by ships carrying HNS at sea across the EU;
- availability of sufficient funds for compensation of victims of such accidents.

Using an international regime rather than regional solutions for these purposes better suits the nature of shipping as a global business.

CONTENT: under the draft Council Decision, Member States would:

- be authorised to ratify the Protocol of 2010 with the exception of aspects related to judicial cooperation in civil matters. The provisions of the Convention falling within the competence conferred upon the Union under judicial cooperation in civil matters will be subject to a Decision adopted in parallel to this Decision;
- agree to be bound by the 2010 Protocol within two-year period from the entry into force of the Decision. Early adherence to the 2010 Protocol by all EU Member States will allow the threshold for entry into force concerning both the number of IMO Member States and aggregate fleet required (12 States including 4 with not less than 2 million units of gross tonnage each) to be attained.

State signature, ratification or acceptance of the 2010 Protocol nullifies any prior signature or ratification by that State of the 1996 HNS Convention. States ratifying the Protocol express their consent to be bound by the consolidated text of the 2010 HNS Convention, as a single, consolidated instrument for the Convention, which will take effect once the 2010 Protocol enters into force.

When ratifying or acceding to the Protocol of 2010, Member States must inform the Secretary-General of the International Maritime Organisation in writing that such ratification or accession has taken place in accordance with this Decision and the Decision adopted parallel to this Decision with regard to aspects falling within the competence conferred upon the Union in the field of judicial cooperation in civil matters.