



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

authorising the Republic of Slovenia to ratify, in the interest of the European Community, the Protocol of 12 February 2004 amending the Paris Convention of 29 July 1960 on Third-Party Liability in the Field of Nuclear Energy

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. THE 2003 AND 2004 DECISIONS

By two Decisions, 2003/882/EC of 27 November 2003 and 2004/294/EC of 8 March 2004, The Council authorised the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third-Party Liability in the Field of Nuclear Energy to sign and ratify, in the interest of the European Community, the Protocol amending that Convention, or to accede to it.

Those Decisions were necessary because the Protocol contains provisions which impact on the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Community has exclusive competence in that field; the Member States retain their competence in matters covered by the Protocol which do not affect Community law.

The Paris Convention and its amending Protocol are not open to regional integration organisations so in this highly exceptional case there was felt to be justification for the Member States to ratify or accede to the Protocol in the interest of the Community.

The two decisions were addressed to the Member States which are Contracting Parties to the Paris Convention, to the express exclusion of Denmark, Austria, Ireland and Luxembourg. Denmark is in fact not bound by Regulation (EC) No 44/2001 nor subject to its application, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community. In addition, Austria, Ireland and Luxembourg, which are not parties to the Paris Convention, have been expressly exempted from applying the decisions and will continue to be governed by the rules in Regulation (EC) No 44/2001 and to apply them in the field covered by the Paris Convention and its amending Protocol.

The Member States addressed by the above decisions signed the Protocol to that Convention in the interest of the European Community on 12 February 2004. Under Article 2(1) of Decision 2004/294/EC they are to take the steps necessary to ratify the Protocol before 31 December 2006 if possible.

2. THE SITUATION FOLLOWING ENLARGEMENT

Article 53 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic annexed to the Treaty of Accession signed on 16 April 2003 states that “upon accession, the new Member States shall be considered as being addressees of directives and decisions within the meaning of Article 249 of the EC Treaty and of Article 161 of the Euratom Treaty, provided that those directives and decisions have been addressed to all the present Member States.”

Council Decisions 2003/882/EC and 2004/294/EC authorising the signature and ratification of the Protocol to the Paris Convention were not addressed to “all the present Member States” within the meaning of Article 53 of the Act of Accession. As a result, the States which

acceded to the European Union on 1 May 2004 are not bound by those Decisions, since they were not addressees within the meaning of Article 53 of the Act of Accession.

Moreover, the Decisions were not subject to technical adaptations before accession in accordance with Article 57 of that Act of Accession.

Of the new Member States only Slovenia is a Contracting Party to the Paris Convention; it signed the Protocol to the Convention on 12 February 2004.

The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland and Slovakia are not Contracting Parties to the Paris Convention but are Parties to the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 (the Vienna Convention).

Cyprus and Malta are not parties to any international convention on third-party liability in the nuclear field.

Bulgaria and Romania, about to accede to the Union, are also parties to the Vienna Convention.

3. IMPLEMENTATION OF DECISION 2004/294/EC

The Member States addressed by Decision 2004/294/EC are being contacted with a view to the simultaneous ratification of the Protocol in accordance with Article 2(1) of that Decision.

It is desirable and in the spirit of Decision 2004/294/EC that Slovenia join the other Member States concerned in ratifying the Protocol. However, to that end Slovenia must be authorised to ratify the Protocol in the interest of the European Community just as the Member States referred to in that Decision are.

4. THIS DECISION

In the light of the above, the sole purpose of this Decision is to place Slovenia on an equal footing with the Member States addressed by Decision 2004/294/EC.

As a result, this Decision is without prejudice to:

- the position of the other Member States which are Parties to the Vienna Convention;
- the position of the other Member States which are not Parties to any convention on third-party liability in the nuclear field;
- the Commission's right of initiative on third-party liability in the nuclear field based on the Euratom Treaty.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67 in conjunction with Article 300(2), first subparagraph, and (3), second subparagraph, thereof,

Having regard to the proposal from the Commission¹,

Having regard to the favourable opinion of the European Parliament²,

Whereas:

- (1) The 2004 Protocol amending the Convention of 29 July 1960 on Third-Party Liability in the Field of Nuclear Energy, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (hereafter called the 'Paris Convention'), contains provisions impacting on the rules laid down in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters³, in which the Community has exclusive competence.
- (2) By Decision 2003/882/EC of 27 November 2003 the Member States Party to the Paris Convention were authorised to sign that Protocol in the interest of the Community. By Decision 2004/294/EC of 8 March 2004 the Council also authorised those States to ratify that Protocol in the interest of the European Community or to accede to it. Article 2 of that Decision stated that the Member States were to take the necessary steps to deposit simultaneously their instruments of ratification of the Protocol, or accession to it, before 31 December 2006 if possible.
- (3) Decision 2004/294/EC – like Decision 2003/882/EC – is addressed solely to those Member States which were part of the Community on 8 March 2004, with the exception of Austria, Denmark, Ireland and Luxembourg, as is clear from the combined application of Articles 1(3) and 4 of the Decision.

¹ OJ C , .., p. .

² OJ C , .., p. .

³ OJ L 12, 16.1.2001, p. 1.

- (4) The Republic of Slovenia signed the Protocol on 12 February 2004. Since it acceded to the European Union on 1 May 2004, it was not an addressee of Decision 2004/294/EC; Article 53 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic was not applicable in this case.
- (5) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not to participate in the adoption of this Decision and will not be bound by it nor subject to its application.
- (6) Ratification by Slovenia of the Protocol is without prejudice to the position of the Member States of the Community which are not Parties to the Paris Convention,

HAS ADOPTED THIS DECISION:

Article 1

Without prejudice to the competences of the Community, the Republic of Slovenia hereby ratifies, in the interest of the European Community, the Protocol amending the Paris Convention, the text of which is annexed to Decision 2003/882/EC.

This ratification shall be without prejudice to the positions of those Community Member States which are not Parties to the Paris Convention.

Article 2

Slovenia shall take the necessary steps to deposit its instrument of ratification of the Protocol, if possible simultaneously with the other Member States addressed by Decision 2004/294/EC.

Article 3

On ratification of the Protocol, Slovenia shall inform the Secretary-General of the Organisation for Economic Cooperation and Development in writing that ratification has taken place in accordance with this Decision.

Article 4

This Decision is addressed to the Republic of Slovenia in accordance with the Treaty establishing the European Community.

Done at Brussels,

*For the Council
The President*