COUNCIL DECISION

of 22 October 1999

on the acceptance of amendments to the Convention for the Protection of the Mediterranean Sea against Pollution and to the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft (Barcelona Convention)

(1999/802/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1), in conjunction with the first sentence of Article 300(2) and the first subparagraph of Article 300(3), thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Whereas:

(1) The Community is a Contracting Party to the Convention for the Protection of the Mediterranean Sea against Pollution, hereinafter referred to as the 'Barcelona Convention' [2], and has also concluded four of the Protocols adopted within the framework of the Convention, namely the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft [2], the Protocol concerning Cooperation in Combating Pollution by Oil and other Harmful Substances [3], the Protocol for Protection against Pollution from Land-based Sources [4] and the Protocol concerning Specially Protected Areas [5];

(2) The Commission took part on behalf of the Community, within the framework of the working party set up by the Contracting Parties to the Barcelona Convention, in the negotiations on the revision of the Barcelona Convention and the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft, hereinafter referred to as the 'Protocol';

(3) The Community needs to commit itself at international level in those areas covered by the revised Convention and Protocol which fall within its jurisdiction;

(4) Under Article 174 of the Treaty, Community policy on the environment contributes to the pursuit of the objectives, *inter alia*, of preserving, protecting and improving the quality of the environment and promoting measures at international level to deal with regional or worldwide environmental problems;

(5) The area covered by the amendments to the Barcelona Convention and the Protocol falls at least partly within the Community's jurisdiction; the Community has adopted several directives in this area; it is also a Contracting Party to many international Conventions in this field; the Community is taking steps in this context to ensure that the conclusion of these international agreements neither conflicts with, nor alters the scope of, current Community law;

(6) Community accession to the revised Barcelona Convention and Protocol will help to attain the objectives set out in Article 174 of the Treaty;

(7) The revised Barcelona Convention and Protocol were adopted and opened for signature by the Contracting Parties at the Conference of Plenipotentiaries held in Barcelona on 9 and 10 June 1995;

(8) The Community has signed alongside the Member States the revisions to the Barcelona Convention and the Protocol for the prevention of pollution by dumping from ships and aircraft,

HAS DECIDED AS FOLLOWS:

Article 1

The amendments to the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution and the

[1] OJ C 219, 30.7.1999, p. 186.
[2] Decision 77/585/EEC, OJ L 240, 19.9.1977, p. 1.
[3] Decision 81/420/EEC, OJ L 162, 19.6.1981, p. 4.
[4] Decision 83/101/EEC, OJ L 67, 12.3.1983, p. 1.
[5] Decision 84/132/EEC, OJ L 68, 10.3.1984, p. 36.

Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft are hereby approved on behalf of the Community.

The texts of the said amendments are attached to this Decision.

Article 2

The President of the Council is hereby authorised to notify the acceptance, on behalf of the Community, of the amendments to the Convention for the Protection of the Mediterranean Sea against Pollution and the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft in accordance with Article 16 of the Convention for the Protection of the Mediterranean Sea against Pollution [1].

Article 3

This Decision shall be published in the *Official Journal of the European Communities*.

It shall take effect on the day of its adoption.

Done at Luxembourg, 22 October 1999.

For the Council

The President

S. MÖNKÄRE

[1] The date of entry into force of the amendments to the Convention for the Protection of the Mediterranean Sea against Pollution and to the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council of the European Union.

I. AMENDMENTS TO THE CONVENTION FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST POLLUTION

A. Title

The title of the Convention is amended as follows:

'CONVENTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT AND THE COASTAL REGION OF THE MEDITERRANEAN'.

B. Preambular paragraphs

The second preambular paragraph of the Convention is amended as follows:

'FULLY AWARE of their responsibility to preserve and sustainably develop this common heritage for the benefit and enjoyment of present and future generations,'.

The following paragraphs are added to the Preamble:

'FULLY AWARE that the Mediterranean Action Plan, since its adoption in 1975 and through its evolution, has contributed to the process of sustainable development in the Mediterranean region and has represented a substantive and dynamic tool for the implementation of the activities related to the Convention and its Protocols by the Contracting Parties,

TAKING INTO ACCOUNT the results of the United Nations Conference on Environment and Development, held in Rio de Janeiro from 4 to 14 June 1992,

ALSO TAKING INTO ACCOUNT the Declaration of Genoa of 1985, the Charter of Nicosia of 1990, the Declaration of Cairo of 1992 on Euro-Mediterranean Cooperation on the Environment within the Mediterranean Basin, the recommendations of the conference of Casablanca of 1993, and the Declaration of Tunis of 1994 on the Sustainable Development of the Mediterranean,

BEARING IN MIND the relevant provisions of the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982 and signed by many Contracting Parties.'

C. *Article 1*

Geographical coverage

Paragraph 2 of Article 1 is amended as follows:

'2. The application of the Convention may be extended to coastal areas as defined by each Contracting Party within its own territory.'

The following paragraph is added to Article 1 as new paragraph 3:

'3. Any Protocol to this Convention may extend the geographical coverage to which that particular Protocol applies.'

D. *Article 2*

Definitions

Paragraph (a) of Article 2 is amended as follows:

'(a) "Pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results, or is likely to result, in such

deleterious effect as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of seawater and reduction of amenities.'

E. *Article 3*

General provisions

Paragraphs 1 and 2 of Article 3 are amended as follows:

'1. *(renumbered as 2)* The Contracting Parties may enter into bilateral or multilateral agreements, including regional or subregional agreements for the promotion of sustainable development, the protection of the environment, the conservation and preservation of natural resources in the Mediterranean Sea Area, provided that such agreements are consistent with this Convention and the Protocols and conform to international law. Copies of such agreements shall be communicated to the Organisation. As appropriate, Contracting Parties should make use of existing organisations, agreements or arrangements in the Mediterranean Sea Area.

2. *(renumbered as 3)* Nothing in this Convention and its Protocols shall prejudice the rights and positions of any State concerning the United Nations Convention on the Law of the Sea of 1982.'

The following new paragraphs are added to Article 3:

'0. *(renumbered as 1)* The Contracting Parties, when applying this Convention and its related Protocols, shall act in conformity with international law.

3. *(renumbered as 4)* The Contracting Parties shall take individual or joint initiatives compatible with international law through the relevant international organisations to encourage the implementation of the provisions of this Convention and its Protocols by all the non-party States.

3 *bis*. *(renumbered as 5)* Nothing in this Convention and its Protocols shall affect the sovereign immunity of warships or other ships owned or operated by a State while engaged in government non-commercial service. However, each Contracting Party shall ensure that its vessels and aircraft, entitled to sovereign immunity under international law, act in a manner consistent with this Protocol.'

F. *Article 4*

General obligations

Article 4 is amended as follows:

'1. The Contracting Parties shall individually or jointly take all appropriate measures in accordance with the provisions of this Convention and those Protocols in force to which they are party to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute towards its sustainable development.

2. The Contracting Parties pledge themselves to take appropriate measures to implement the Mediterranean Action Plan and, further, to pursue the protection of the marine environment and the natural resources of the Mediterranean Sea Area as an integral part of the development process, meeting the needs of present and future generations in an equitable manner. For the purpose of implementing the objectives of sustainable development the Contracting Parties shall take fully into account the recommendations of the Mediterranean Commission on Sustainable development established within the framework of the Mediterranean Action Plan.

3. In order to protect the environment and contribute to the sustainable development of the Mediterranean Sea Area, the Contracting Parties shall:

(a) apply, in accordance with their capabilities, the precautionary principle, by virtue of which where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

(b) apply the polluter pays principle, by virtue of which the costs of pollution prevention, control and reduction measures are to be borne by the polluter, with due regard to the public interest;

(c) undertake environmental impact assessment for proposed activities that are likely to cause a significant adverse impact on the marine environment and are subject to an authorisation by competent national authorities;

(d) promote cooperation between and among States in environmental impact assessment procedures related to activities under their jurisdiction or control which are likely to have a significant adverse effect on the marine environment of other States or areas beyond the limits of national jurisdiction, on the basis of notification, exchange of information and consultation;

(e) commit themselves to promote the integrated management of the coastal zones, taking into account the protection of areas of ecological and landscape interest and the rational use of natural resources.

4. In implementing the Convention and the related Protocols, the Contracting Parties shall:

(a) adopt programmes and measures which contain, where appropriate, time limits for their completion;

(b) utilise the best available techniques and the best environmental practices and promote the application of, access to and transfer of environmentally sound technology, including clean production technologies, taking into account the social, economic and technological conditions.

5. The Contracting Parties shall cooperate in the formulation and adoption of Protocols, prescribing agreed measures, procedures and standards for the implementation of this Convention.

6. The Contracting Parties further pledge themselves to promote, within the international bodies considered to be competent by the Contracting Parties, measures concerning the implementation of programmes of sustainable development, the protection conservation and rehabilitation of the environment and of the natural resources in the Mediterranean Sea Area.'

G. Article 5 and its title are amended as follows:

'*Article 5*

Pollution caused by dumping from ships and aircraft or incineration at sea

The Contracting Parties shall take all appropriate measures to prevent, abate and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area caused by dumping from ships and aircraft or incineration at sea.'

H. *Article 6*

Pollution from ships

Article 6 is amended as follows:

'The Contracting Parties shall take all measures in conformity with international law to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area caused by discharges from ships and to ensure the effective implementation in that Area of the rules which are generally recognised at the international level relating to the control of this type of pollution.'

I. *Article 7*

Pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil

Article 7 is amended as follows:

'The Contracting Parties shall take all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil.'

J. *Article 8*

Pollution from land-based sources

Article 8 is amended as follows:

'The Contracting Parties shall take all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to draw up and implement plans for the reduction and phasing out of substances that are toxic, persistent and liable to bioaccumulate arising from land-based sources. These measures shall apply:

(a) to pollution from land-based sources originating within the territories of the Parties, and reaching the sea:

directly from outfalls discharging into the sea or through coastal disposal;

indirectly through rivers, canals or other watercourses, including underground watercourses, or through run-off;

(b) to pollution from land-based sources transported by the atmosphere.'

K. The following new Article 9A is adopted:

'*Article 9A* (renumbered as Article 10)

Conservation of biological diversity

The Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve biological diversity, rare or fragile ecosystems, as well as species of wild fauna and flora which are rare, depleted, threatened or endangered and their habitats, in the area to which this Convention applies.'

L. The following new Article 9B is adopted:

'*Article 9B* (renumbered as Article 11)

Pollution resulting from the transboundary movements of hazardous wastes and their disposal

The Contracting Parties shall take all appropriate measures to prevent, abate and to the fullest possible extent eliminate pollution of the environment which can be caused by transboundary movements and disposal of hazardous wastes, and to reduce to a minimum, and if possible eliminate, such transboundary movements.'

Articles 9A and 9B are renumbered as Articles 10 and 11.

M. *Article 11* (renumbered as Article 13)

Scientific and technological cooperation

Paragraph 2 is amended as follows:

'2. The Contracting Parties undertake to promote the research on, access to and transfer of environmentally sound technology, including clean production technologies, and to cooperate in the formulation, establishment and implementation of clean production processes.'

N. The following new Article 11A is adopted:

'*Article 11A* (renumbered as Article 14)

Environmental legislation

1. The Contracting Parties shall adopt legislation implementing the Convention and the Protocols.

2. The Secretariat may, upon request from a Contracting Party, assist that Party in the drafting of environmental legislation in compliance with the Convention and the Protocols.'

O. The following new Article 11B is adopted:

'*Article 11 B* (renumbered as Article 15)

Public information and participation

1. The Contracting Parties shall ensure that their competent authorities shall give to the public appropriate access to information on the environmental state in the field of application of the Convention and the Protocols, on activities or measures adversely affecting or likely to affect it and on activities carried out or measures taken in accordance with the Convention and the Protocols.

2. The Contracting Parties shall ensure that the opportunity is given to the public to participate in decision-making processes relevant to the field of application of the Convention and the Protocols, as appropriate.

3. The provision of paragraph 1 of this Article shall not prejudice the right of Contracting Parties to refuse, in accordance with their legal systems and applicable international regulations, to provide access to such information on the ground of confidentiality, public security or investigation proceedings, stating the reasons for such a refusal.'

P. *Article 12* (renumbered as Article 16)

Liability and compensation

Article 12 is amended as follows:

'The Contracting Parties undertake to cooperate in the formulation and adoption of appropriate rules and procedures for the determination of liability and compensation for damage resulting from pollution of the marine environment in the Mediterranean Sea Area.'

Q. *Article 13* (renumbered as Article 17)

Institutional arrangements

Paragraph (iii) of Article 13 is amended as follows:

'(iii) to receive, consider and reply to enquiries and information from the Contracting Parties;'.

The following new paragraphs are added to Article 13:

'(iii *bis*) *(renumbered as (iv))*:

to receive, consider and reply to enquiries and information from non-governmental organisations and the public when they relate to subjects of common interest or to activities carried out at the regional level; in this case, the Contracting Parties concerned shall be informed;

(iv *bis*) *(renumbered as (vi))*:

to regularly report to the Contracting Parties on the implementation of the Convention and of the Protocols;'.

Paragraphs (iv), (v) and (vi) are renumbered as paragraphs (v), (vii) and (viii) respectively.

R. *Article 14* (renumbered as Article 18)

Meetings of the Contracting Parties

The following new subparagraph is added to Article 14, paragraph 2:

'(vii) to approve the Programme Budget.'.

S. The following new Article 14A is adopted:

'*Article 14A* (renumbered as Article 19)

Bureau

1. The Bureau of the Contracting Parties shall be composed of representatives of the Contracting Parties elected by the Meetings of the Contracting Parties. In electing the members of the Bureau, the Meetings of the Contracting Parties shall observe the principle of equitable geographical distribution.

2. The functions of the Bureau and the terms and conditions upon which it shall operate shall be set in the Rules of Procedure adopted by the Meetings of the Contracting Parties.'

T. The following new Article 14B is adopted:

'*Article 14B* (renumbered as Article 20)

Observers

1. The Contracting Parties may decide to admit as observers at their meetings and conferences:

(a) any State which is not a Contracting Party to the Convention

(b) any international governmental organisation or any non-governmental organisation the activities of which are related to the Convention.

2. Such observers may participate in meetings without the right to vote and may present any information or report relevant to the objectives of the Convention.

3. The conditions for the admission and participation of observers shall be established in the Rules of Procedure adopted by the Contracting Parties.'

Articles 14A and 14B are renumbered as Articles 19 and 20

U. *Article 15* (renumbered as Article 21)

Adoption of additional protocols

Paragraph 3 of Article 15 is deleted.

V. *Article 18* (renumbered as Article 24)

Rules of procedure and financial rules

Paragraph 2 of Article 18 is amended as follows:

'2. The Contracting Parties shall adopt financial rules, prepared in consultation with the Organisation, to determine, in particular, their financial participation in the Trust Fund.'

W. *Article 20* (renumbered as Article 26)

Reports

Article 20 is amended as follows:

'1. The Contracting Parties shall transmit to the Organisation reports on:

(a) the legal, administrative or other measures taken by them for the implementation of this Convention, the Protocols and of the recommendations adopted by their meetings;

(b) the effectiveness of the measures referred to in subparagraph (a) and problems encountered in the implementation of the instruments as mentioned above.

2. The reports shall be submitted in such form and at such intervals as the Meetings of Contracting Parties may determine.'

X. *Article 21* (renumbered as Article 27)

Compliance control

Article 21 is amended as follows:

'The meetings of the Contracting Parties shall, on the basis of periodical reports referred to in Article 20 and any other report submitted by the Contracting Parties, assess the compliance with the Convention and the Protocols as well as the measures and recommendations. They shall recommend, when appropriate, the necessary steps to bring about full compliance with the Convention and the Protocols and promote the implementation of the decisions and recommendations.'

Articles 10, 16, 17, 19, 22, 23, 24, 25, 26, 27, 28 and 29 are renumbered as Articles 12, 22, 23, 25, 28, 29, 30, 31, 32, 33, 34 and 35 respectively.

II. AMENDMENTS TO THE PROTOCOL FOR THE PREVENTION OF POLLUTION OF THE MEDITERRANEAN SEA BY DUMPING FROM SHIPS AND AIRCRAFT

A. Title

The title of the Protocol is amended as follows:

'PROTOCOL FOR THE PREVENTION AND ELIMINATION OF POLLUTION OF THE MEDITERRANEAN SEA BY DUMPING FROM SHIPS AND AIRCRAFT OR INCINERATION AT SEA'.

B. Preambular paragraphs

The second preambular paragraph of the Protocol is amended as follows:

'RECOGNISING the danger posed to the marine environment by the dumping or incineration of wastes or other matter.'.

The fourth preambular paragraph of the Protocol is amended as follows:

'BEARING IN MIND that Chapter 17 of Agenda 21 of UNCED calls on the Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London, 1972) to take the necessary measures to end dumping in the ocean and the incineration of hazardous substances.'.

The following paragraph is added to the Preamble:

'TAKING INTO ACCOUNT Resolutions LC 49(16) and LC 50(16), approved by the 16th Consultative Meeting of the 1972 London Convention, which prohibit the dumping and incineration of industrial wastes at sea.'.

C. Article 1

Article 1 is amended as follows:

'The Contracting Parties to this Protocol (hereinafter referred to as "the Parties") shall take all appropriate measures to prevent, abate and eliminate to the fullest extent possible pollution of the Mediterranean Sea caused by dumping from ships and aircraft or incineration at sea.'

D. Article 2

Article 2 is amended as follows:

'The area to which this Protocol applies shall be the Mediterranean Sea Area as defined in Article 1 of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (hereinafter referred to as "the Convention").'

E. Article 3

The following new subparagraphs are added to Article 3:

'3(c) Any deliberate disposal or storage and burial of wastes or other matter on the seabed or in the marine subsoil from ships or aircraft.'

'4*(bis)* *(renumbered as 5)* "Incineration at sea" means the deliberate combustion of wastes or other matter in the maritime waters of the Mediterranean Sea, with the aim of thermal destruction and does not include activities incidental to the normal operations of ships or aircraft.'

Paragraph 5 is renumbered as paragraph 6.

F. Article 4

Article 4 is amended as follows:

'1. The dumping of wastes or other matter, with the exception of those listed in paragraph 2 of this Article, is prohibited.

2. The following is the list referred to in the preceding paragraph:

(a) dredged material;

(b) fish waste or organic materials resulting from the processing of fish and other marine organisms;

(c) vessels, until 31 December 2000;

(d) platforms and other man-made structures at sea, provided that material capable of creating floating debris or otherwise contributing to pollution of the marine environment has been removed to the maximum extent, without prejudice to the provisions of the Protocol concerning Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil.

(e) inert uncontaminated geological materials the chemical constituents of which are unlikely to be released into the marine environment.'

G. Article 5

Article 5 is amended as follows:

'The dumping of the wastes or other matter listed in Article 4(2) requires a prior special permit from the competent national authorities.'

H. Article 6

Article 6 is amended as follows:

'1. The permit referred to in Article 5 shall be issued only after careful consideration of the factors set forth in the Annex to this Protocol or the criteria, guidelines and relevant procedures adopted by the meeting of the Contracting Parties pursuant to paragraph 2 below;

2. The Contracting Parties shall draw up and adopt criteria, guidelines and procedures for the dumping of wastes or other matter listed in Article 4(2) so as to prevent, abate and eliminate pollution.'

I. Article 7

Article 7 is amended as follows:

'Incineration at sea is prohibited.'

J. Article 9

Article 9 is amended as follows:

'If a Party in a critical situation of an exceptional nature considers that wastes or other matter not listed in Article 4(2) of this Protocol cannot be disposed of on land without unacceptable danger or damage, above all for the safety of human life, the Party concerned shall forthwith consult the Organisation. The Organisation, after consulting the Parties to this Protocol, shall recommend methods of storage or the most satisfactory means of destruction or disposal under the prevailing circumstances. The Party shall inform the Organisation of the steps adopted in pursuance of these recommendations. The Parties pledge themselves to assist one another in such situations.'

K. Article 10

Subparagraph 1(a) of Article 10 is amended as follows:

'(a) issue the permits provided for in Article 5;'.

Subparagraph 1(b) of Article 10 is deleted.

Subparagraph 1(c) is renumbered as subparagraph 1(b).

Paragraph 2 is amended as follows:

'2. The competent authorities of each Party shall issue the permits provided for in Article 5 in respect of the wastes or other matter intended for dumping:'.

L. Article 11

Paragraph 2 of Article 11 is deleted.

M. Article 14

Paragraph 3 of Article 14 is amended as follows:

'3. The adoption of amendments to the Annex to this Protocol pursuant to Article 17 of the Convention shall require a three-fourths majority vote of the Parties.'.

N. Annex I

Annex I is deleted.

O. Annex II

Annex II is deleted.

P. Annex III

Annex III is changed to Annex and is amended as follows:

'*ANNEX*

The factors to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea taking into account Article 6 include:

…'