

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 2 March 2004

authorising the Member States to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and authorising Austria and Luxembourg, in the interest of the European Community, to accede to the underlying instruments

(2004/246/EC)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

Whereas:

- (1) The Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, (hereinafter the Supplementary Fund Protocol), is aimed at ensuring adequate, prompt, and effective compensation of persons who suffer damage caused by oil spills caused by tankers. By significantly raising the limits of compensation available in the present international system, the Supplementary Fund Protocol addresses one of the most significant shortcomings in the international regulation of oil pollution liability.
- (2) Articles 7 and 8 of the Supplementary Fund Protocol affect Community legislation on jurisdiction and the recognition and enforcement of judgments, as 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 ⁽²⁾.
- (3) The Community has exclusive competence in relation to Articles 7 and 8 of the Protocol, insofar as those Articles affect the rules laid down in Regulation (EC) No 44/

2001. The Member States retain their competence for matters covered by the Protocol which do not affect Community law.

- (4) Pursuant to the Supplementary Fund Protocol, only sovereign States may be party to it; it is not therefore possible for the Community to ratify or accede to the Protocol, nor is there a prospect that it will be able to do so in the near future.
- (5) The Council should therefore, exceptionally, authorise the Member States to sign and conclude the Supplementary Fund Protocol in the interest of the Community, under the conditions set out in this Decision.
- (6) The United Kingdom and Ireland are bound by Regulation (EC) No 44/2001 and are therefore taking part in the adoption and application of this Decision.
- (7) 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 taking part in the adoption of this Decision, and is not bound by it or subject to its application.
- (8) Only Contracting Parties to the underlying instruments may become Contracting Parties to the Supplementary Fund Protocol. Austria and Luxembourg are not currently parties to the underlying instruments. Since the underlying instruments contain provisions affecting Regulation (EC) No 44/2001, Austria and Luxembourg should also be authorised to accede to these instruments.

⁽¹⁾ Assent of 12 February 2004 (not yet published in the Official Journal).

⁽²⁾ OJ L 12, 16.1.2001, p. 1.

- (9) Member States, with the exception of Austria and Luxembourg, should sign or ratify the Protocol, as far as possible before the end of June 2004. The choice of either signing and subsequently ratifying the Protocol, or signing it without reservation as to ratification, acceptance or approval, is left to the Member States.
- (10) The situation of Austria and Luxembourg is different in that they cannot become Contracting Parties to the Supplementary Fund Protocol until they have acceded to the underlying instruments. For this reason, Austria and Luxembourg should therefore accede to the underlying instruments and to the Supplementary Fund Protocol, as far as possible by 31 December 2005 ⁽¹⁾,

if possible, before 30 June 2004, with the exception of Austria and Luxembourg, which express their consent to be bound by the Protocol under the conditions laid down in paragraph 3 of this Article.

2. Member States shall exchange information with the Commission within the Council, by 30 April 2004, on the date on which they expect their internal procedures to be completed.

3. Austria and Luxembourg shall take the necessary steps to express their consent to be bound by the underlying instruments and the Supplementary Fund Protocol, as far as possible, by 31 December 2005.

HAS ADOPTED THIS DECISION:

Article 1

1. The Member States are hereby authorised to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, (the Supplementary Fund Protocol) subject to the conditions set out in the following Articles.

2. In addition, Austria and Luxembourg are authorised to accede to the underlying instruments.

3. The text of the Supplementary Fund Protocol is attached in Annex I to this Decision. The text of the underlying instruments is attached in Annexes II and III to this Decision.

4. In this Decision, the term 'underlying instruments' shall mean the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 and the Protocol of 1992 to amend the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

5. In this Decision, 'Member State' means all the Member States with the exception of Denmark.

Article 2

1. Member States shall take the necessary steps to express their consent to be bound pursuant to Article 19(2) thereof by the Supplementary Fund Protocol within a reasonable time and,

Article 3

When signing, ratifying or acceding to the instruments referred to in Article 1, Member States shall inform the Secretary-General of the International Maritime Organisation in writing that such signature, ratification or accession has taken place in accordance with this Decision.

Article 4

Member States shall, at the earliest opportunity, use their best endeavours to ensure that the Supplementary Fund Protocol, and the underlying instruments, are amended in order to allow the Community to become a Contracting Party to them.

Article 5

This Decision is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 2 March 2004.

For the Council

The President

M. CULLEN

⁽¹⁾ See Commission Declaration.

ANNEX I

Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992

THE CONTRACTING STATES TO THE PRESENT PROTOCOL,

BEARING IN MIND the International Convention on Civil Liability for Oil Pollution Damage, 1992 (hereinafter the 1992 Liability Convention),

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (hereinafter the 1992 Fund Convention),

AFFIRMING the importance of maintaining the viability of the international oil pollution liability and compensation system,

NOTING that the maximum compensation afforded by the 1992 Fund Convention might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention,

RECOGNISING that a number of Contracting States to the 1992 Liability and 1992 Fund Conventions consider it necessary as a matter of urgency to make available additional funds for compensation through the creation of a supplementary scheme to which States may accede if they so wish,

BELIEVING that the supplementary scheme should seek to ensure that victims of oil pollution damage are compensated in full for their loss or damage and should also alleviate the difficulties faced by victims in cases where there is a risk that the amount of compensation available under the 1992 Liability and 1992 Fund Conventions will be insufficient to pay established claims in full and that as a consequence the International Oil Pollution Compensation Fund, 1992, has decided provisionally that it will pay only a proportion of any established claim,

CONSIDERING that accession to the supplementary scheme will be open only to Contracting States to the 1992 Fund Convention,

HAVE AGREED AS FOLLOWS:

GENERAL PROVISIONS*Article 1*

For the purposes of this Protocol:

1. '1992 Liability Convention' means the International Convention on Civil Liability for Oil Pollution Damage, 1992;
2. '1992 Fund Convention' means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992;
3. '1992 Fund' means the International Oil Pollution Compensation Fund, 1992, established under the 1992 Fund Convention;
4. 'Contracting State' means a Contracting State to this Protocol, unless stated otherwise;
5. When provisions of the 1992 Fund Convention are incorporated by reference into this Protocol, 'Fund' in that Convention means 'Supplementary Fund', unless stated otherwise;
6. 'Ship', 'Person', 'Owner', 'Oil', 'Pollution Damage', 'Preventive Measures' and 'Incident' have the same meaning as in Article I of the 1992 Liability Convention;
7. 'Contributing Oil', 'Unit of Account', 'Ton', 'Guarantor' and 'Terminal installation' have the same meaning as in Article 1 of the 1992 Fund Convention, unless stated otherwise;
8. 'Established claim' means a claim which has been recognised by the 1992 Fund or been accepted as admissible by decision of a competent court binding upon the 1992 Fund not subject to ordinary forms of review and which would have been fully compensated if the limit set out in Article 4(4), of the 1992 Fund Convention had not been applied to that incident;
9. 'Assembly' means the Assembly of the International Oil Pollution Compensation Supplementary Fund, 2003, unless otherwise indicated;
10. 'Organisation' means the International Maritime Organisation;
11. 'Secretary-General' means the Secretary-General of the Organisation.