

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)

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.

Changes to legislation: There are currently no known outstanding effects for the 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). (See end of Document for details)

- (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.
- (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⁽³⁾,

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.

[^{F12} Furthermore, the Czech Republic, Estonia, Luxembourg, Hungary, Austria and Slovakia are hereby 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.

Changes to legislation: There are currently no known outstanding effects for the 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). (See end of Document for details)

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

Textual Amendments

- F1** Substituted by [Council Decision of 24 September 2004 adapting Decision 2004/246/EC by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia \(2004/664/EC\)](#).

Article 2

[^{F1} Member States shall take the necessary steps to express their consent to be bound by the Supplementary Fund Protocol, pursuant to Article 19(2) thereof, within a reasonable time limit and, if possible, before 30 June 2004, with the exception of the Czech Republic, Estonia, Luxembourg, Hungary, Austria and Slovakia, which express their consent to be bound by the Protocol subject to the conditions set out 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.

[^{F13} The Czech Republic, Estonia, Luxembourg, Hungary, Austria and Slovakia 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.]

Textual Amendments

- F1** Substituted by [Council Decision of 24 September 2004 adapting Decision 2004/246/EC by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia \(2004/664/EC\)](#).

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.

Changes to legislation: There are currently no known outstanding effects for the 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). (See end of Document for details)

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, 1 992 (hereinafter the 1 992 Liability Convention),

HAVING CONSIDERED the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1 992 (hereinafter the 1 992 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 1 992 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 1 992 Liability and 1 992 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 1 992 Liability and 1 992 Fund Conventions will be insufficient to pay established claims in full and that as a consequence the International Oil Pollution Compensation Fund, 1 992, 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 1 992 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;

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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.

Article 2

1 An International Supplementary Fund for compensation for pollution damage, to be named 'The International Oil Pollution Compensation Supplementary Fund, 2003' (hereinafter 'the Supplementary Fund'), is hereby established.

2 The Supplementary Fund shall in each Contracting State be recognised as a legal person capable under the laws of that State of assuming rights and obligations and of being a party in legal proceedings before the courts of that State. Each Contracting State shall recognise the Director of the Supplementary Fund as the legal representative of the Supplementary Fund.

Article 3

This Protocol shall apply exclusively:

- (a) to pollution damage caused:
 - (i) in the territory, including the territorial sea, of a Contracting State, and
 - (ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured;
- (b) to preventive measures, wherever taken, to prevent or minimise such damage.

SUPPLEMENTARY COMPENSATION

Article 4

1 The Supplementary Fund shall pay compensation to any person suffering pollution damage if such person has been unable to obtain full and adequate compensation for an established claim for such damage under the terms of the 1992 Fund Convention, because the total damage exceeds, or there is a risk that it will exceed, the applicable limit of compensation laid down in Article 4(4) of the 1992 Fund Convention in respect of any one incident.

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3 Where the amount of established claims against the Supplementary Fund exceeds the aggregate amount of compensation payable under paragraph 2, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under this Protocol shall be the same for all claimants.

4 The Supplementary Fund shall pay compensation in respect of established claims as defined in Article 1(8), and only in respect of such claims.

Article 5

The Supplementary Fund shall pay compensation when the Assembly of the 1992 Fund has considered that the total amount of the established claims exceeds, or there is a risk that the total amount of established claims will exceed the aggregate amount of compensation available under Article 4(4) of the 1992 Fund Convention and that as a consequence the Assembly of the 1992 Fund has decided provisionally or finally that payments will only be made for a proportion of any established claim. The Assembly of the Supplementary Fund shall then decide whether and to what extent the Supplementary Fund shall pay the proportion of any established claim not paid under the 1992 Liability Convention and the 1992 Fund Convention.

Article 6

1 Subject to Article 15(2) and (3), rights to compensation against the Supplementary Fund shall be extinguished only if they are extinguished against the 1992 Fund under Article 6 of the 1992 Fund Convention.

2 A claim made against the 1992 Fund shall be regarded as a claim made by the same claimant against the Supplementary Fund.

Article 7

1 The provisions of Article 7(1), (2), (4), (5) and (6) of the 1992 Fund Convention shall apply to actions for compensation brought against the Supplementary Fund in accordance with Article 4(1) of this Protocol.

2 Where an action for compensation for pollution damage has been brought before a court competent under Article IX of the 1992 Liability Convention against the owner of a ship or his guarantor, such court shall have exclusive jurisdictional competence over any action against the Supplementary Fund for compensation under the provisions of Article 4 of this Protocol in respect of the same damage. However, where an action for compensation for pollution damage under the 1992 Liability Convention has been brought before a court in a Contracting State to the 1992 Liability Convention but not to this Protocol, any action against the Supplementary Fund under Article 4 of this Protocol shall at the option of the claimant be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State to this Protocol competent under Article IX of the 1992 Liability Convention.

3 Notwithstanding paragraph 1, where an action for compensation for pollution damage against the 1992 Fund has been brought before a court in a Contracting State to the 1992 Fund Convention but not to this Protocol, any related action against the Supplementary Fund shall, at the option of the claimant, be brought either before a court of the State where the Supplementary Fund has its headquarters or before any court of a Contracting State competent under paragraph 1.

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Article 8

1 Subject to any decision concerning the distribution referred to in Article 4(3) of this Protocol, any judgment given against the Supplementary Fund by a court having jurisdiction in accordance with Article 7 of this Protocol, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognised and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention.

2 A Contracting State may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognised and enforced at least to the same extent as under paragraph 1.

Article 9

1 The Supplementary Fund shall, in respect of any amount of compensation for pollution damage paid by the Supplementary Fund in accordance with Article 4(1), of this Protocol, acquire by subrogation the rights that the person so compensated may enjoy under the 1992 Liability Convention against the owner or his guarantor.

2 The Supplementary Fund shall acquire by subrogation the rights that the person compensated by it may enjoy under the 1992 Fund Convention against the 1992 Fund.

3 Nothing in this Protocol shall prejudice any right of recourse or subrogation of the Supplementary Fund against persons other than those referred to in the preceding paragraphs. In any event the right of the Supplementary Fund to subrogation against such person shall not be less favourable than that of an insurer of the person to whom compensation has been paid.

4 Without prejudice to any other rights of subrogation or recourse against the Supplementary Fund which may exist, a Contracting State or agency thereof which has paid compensation for pollution damage in accordance with provisions of national law shall acquire by subrogation the rights which the person so compensated would have enjoyed under this Protocol.

CONTRIBUTIONS

Article 10

1 Annual contributions to the Supplementary Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 11(2)(a) or (b), has received in total quantities exceeding 150 000 tons:

2 The provisions of Article 10(2) of the 1992 Fund Convention shall apply in respect of the obligation to pay contributions to the Supplementary Fund.

Article 11

1 With a view to assessing the amount of annual contributions due, if any, and taking account of the necessity to maintain sufficient liquid funds, the Assembly shall for each calendar year make an estimate in the form of a budget of:

2 The Assembly shall decide the total amount of contributions to be levied. On the basis of that decision, the Director of the Supplementary Fund shall, in respect of each Contracting State, calculate for each person referred to in Article 10, the amount of that person's annual contribution:

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3 The sums referred to in paragraph 2 shall be arrived at by dividing the relevant total amount of contributions required by the total amount of contributing oil received in all Contracting States in the relevant year.

4 The annual contribution shall be due on the date to be laid down in the Internal Regulations of the Supplementary Fund. The Assembly may decide on a different date of payment.

5 The Assembly may decide, under conditions to be laid down in the Financial Regulations of the Supplementary Fund, to make transfers between funds received in accordance with paragraph 2(a) and funds received in accordance with paragraph 2(b).

Article 12

1 The provisions of Article 13 of the 1992 Fund Convention shall apply to contributions to the Supplementary Fund.

2 A Contracting State itself may assume the obligation to pay contributions to the Supplementary Fund in accordance with the procedure set out in Article 14 of the 1992 Fund Convention.

Article 13

1 Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with Article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under Article 15(2), of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.

2 Where a Contracting State does not fulfil its obligations to submit the communication referred to in paragraph 1 and this results in a financial loss for the Supplementary Fund, that Contracting State shall be liable to compensate the Supplementary Fund for such loss. The Assembly shall, on the recommendation of the Director of the Supplementary Fund, decide whether such compensation shall be payable by that Contracting State.

Article 14

1 Notwithstanding Article 10, for the purposes of this Protocol there shall be deemed to be a minimum receipt of 1 million tons of contributing oil in each Contracting State.

2 When the aggregate quantity of contributing oil received in a Contracting State is less than 1 million tons, the Contracting State shall assume the obligations that would be incumbent under this Protocol on any person who would be liable to contribute to the Supplementary Fund in respect of oil received within the territory of that State in so far as no liable person exists for the aggregated quantity of oil received.

Article 15

1 If in a Contracting State there is no person meeting the conditions of Article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

2 No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with Article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to Article 13(1) and paragraph 1 of this Article have been complied with in respect of that Contracting State for

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all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.

3 Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under Article 13(1) and paragraph 1 of this Article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.

4 Any payments of contributions due to the Supplementary Fund shall be set off against compensation due to the debtor, or the debtor's agents.

ORGANISATION AND ADMINISTRATION

Article 16

1 The Supplementary Fund shall have an Assembly and a Secretariat headed by a Director.

2 Articles 17 to 20 and 28 to 33 of the 1992 Fund Convention shall apply to the Assembly, Secretariat and Director of the Supplementary Fund.

3 Article 34 of the 1992 Fund Convention shall apply to the Supplementary Fund.

Article 17

1 The Secretariat of the 1992 Fund, headed by the Director of the 1992 Fund, may also function as the Secretariat and the Director of the Supplementary Fund.

2 If, in accordance with paragraph 1, the Secretariat and the Director of the 1992 Fund also perform the function of Secretariat and Director of the Supplementary Fund, the Supplementary Fund shall be represented, in cases of conflict of interests between the 1992 Fund and the Supplementary Fund, by the Chairman of the Assembly.

3 The Director of the Supplementary Fund, and the staff and experts appointed by the Director of the Supplementary Fund, performing their duties under this Protocol and the 1992 Fund Convention, shall not be regarded as contravening the provisions of Article 30 of the 1992 Fund Convention as applied by Article 16(2) of this Protocol insofar as they discharge their duties in accordance with this Article.

4 The Assembly shall endeavour not to take decisions which are incompatible with decisions taken by the Assembly of the 1992 Fund. If differences of opinion with respect to common administrative issues arise, the Assembly shall try to reach a consensus with the Assembly of the 1992 Fund, in a spirit of mutual cooperation and with the common aims of both organizations in mind.

5 The Supplementary Fund shall reimburse the 1992 Fund all costs and expenses arising from administrative services performed by the 1992 Fund on behalf of the Supplementary Fund.

TRANSITIONAL PROVISIONS

Article 18

1 Subject to paragraph 4, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall

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not exceed 20 % of the total amount of annual contributions pursuant to this Protocol in respect of that calendar year.

2 If the application of the provisions in Article 11(2) and (3) would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 20 % of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 20 % of the total annual contributions to the Supplementary Fund in respect of that year.

3 If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Supplementary Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4 The provisions in paragraphs 1 to 3 shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year, including the quantities referred to in Article 14(1), has reached 1 000 million tons or until a period of 10 years after the date of entry into force of this Protocol has elapsed, whichever occurs earlier.

FINAL CLAUSES

Article 19

Signature, ratification, acceptance, approval and accession

1 This Protocol shall be open for signature at London from 31 July 2003 to 30 July 2004.

2 States may express their consent to be bound by this Protocol by:

3 Only Contracting States to the 1992 Fund Convention may become Contracting States to this Protocol.

4 Ratification, acceptance, approval or accession shall be effected by the deposit of a formal instrument to that effect with the Secretary-General.

Article 20

Information on contributing oil

Before this Protocol comes into force for a State, that State shall, when signing this Protocol in accordance with Article 19(2)(a), or when depositing an instrument referred to in Article 19(4) of this Protocol, and annually thereafter at a date to be determined by the Secretary-General, communicate to the Secretary-General the name and address of any person who in respect of that State would be liable to contribute to the Supplementary Fund pursuant to Article 10 as well as data on the relevant quantities of contributing oil received by any such person in the territory of that State during the preceding calendar year.

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Article 21

Entry into force

1 This Protocol shall enter into force three months following the date on which the following requirements are fulfilled:

2 For each State which signs this Protocol without reservation as to ratification, acceptance or approval, or which ratifies, accepts, approves or accedes to this Protocol, after the conditions in paragraph 1 for entry into force have been met, the Protocol shall enter into force three months following the date of the deposit by such State of the appropriate instrument.

3 Notwithstanding paragraphs 1 and 2, this Protocol shall not enter into force in respect of any State until the 1992 Fund Convention enters into force for that State.

Article 22

First session of the Assembly

The Secretary-General shall convene the first session of the Assembly. This session shall take place as soon as possible after the entry into force of this Protocol and, in any case, not more than 30 days after such entry into force.

Article 23

Revision and amendment

1 A conference for the purpose of revising or amending this Protocol may be convened by the Organisation.

2 The Organisation shall convene a Conference of Contracting States for the purpose of revising or amending this Protocol at the request of not less than one third of all Contracting States.

Article 24

Amendment of compensation limit

1 Upon the request of at least one quarter of the Contracting States, any proposal to amend the limit of the amount of compensation laid down in Article 4(2)(a), shall be circulated by the Secretary-General to all Members of the Organisation and to all Contracting States.

2 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organisation for consideration at a date at least six months after the date of its circulation.

3 All Contracting States to this Protocol, whether or not Members of the Organisation, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

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4 Amendments shall be adopted by a two-thirds majority of the Contracting States present and voting in the Legal Committee, expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States shall be present at the time of voting.

5 When acting on a proposal to amend the limit, the Legal Committee shall take into account the experience of incidents and in particular the amount of damage resulting therefrom and changes in the monetary values.

6

7 Any amendment adopted in accordance with paragraph 4 shall be notified by the Organisation to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of 12 months after the date of notification, unless within that period not less than one quarter of the States that were Contracting States at the time of the adoption of the amendment by the Legal Committee have communicated to the Organisation that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

8 An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force 12 months after its acceptance.

9 All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 26(1) and (2), at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

10 When an amendment has been adopted by the Legal Committee but the 12-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 25

Protocols to the 1992 Fund Convention

1 If the limits laid down in the 1992 Fund Convention have been increased by a Protocol thereto, the limit laid down in Article 4(2)(a), may be increased by the same amount by means of the procedure set out in Article 24. The provisions of Article 24(6), shall not apply in such cases.

2 If the procedure referred to in paragraph 1 has been applied, any subsequent amendment of the limit laid down in Article 4(2), by application of the procedure in Article 24 shall, for the purpose of Article 24(6)(b) and (c), be calculated on the basis of the new limit as increased in accordance with paragraph 1.

Article 26

Denunciation

1 This Protocol may be denounced by any Contracting State at any time after the date on which it enters into force for that Contracting State.

2 Denunciation shall be effected by the deposit of an instrument with the Secretary-General.

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3 A denunciation shall take effect 12 months, or such longer period as may be specified in the instrument of denunciation, after its deposit with the Secretary-General.

4 Denunciation of the 1992 Fund Convention shall be deemed to be a denunciation of this Protocol. Such denunciation shall take effect on the date on which denunciation of the Protocol of 1992 to amend the 1971 Fund Convention takes effect according to Article 34 of that Protocol.

5 Notwithstanding a denunciation of the present Protocol by a Contracting State pursuant to this Article, any provisions of this Protocol relating to the obligations to make contributions to the Supplementary Fund with respect to an incident referred to in Article 11(2) (b), and occurring before the denunciation takes effect, shall continue to apply.

Article 27

Extraordinary sessions of the Assembly

1 Any Contracting State may, within 90 days after the deposit of an instrument of denunciation the result of which it considers will significantly increase the level of contributions for the remaining Contracting States, request the Director of the Supplementary Fund to convene an extraordinary session of the Assembly. The Director of the Supplementary Fund shall convene the Assembly to meet not later than 60 days after receipt of the request.

2 The Director of the Supplementary Fund may take the initiative to convene an extraordinary session of the Assembly to meet within 60 days after the deposit of any instrument of denunciation, if the Director of the Supplementary Fund considers that such denunciation will result in a significant increase in the level of contributions of the remaining Contracting States.

3 If the Assembly at an extraordinary session convened in accordance with paragraph 1 or 2 decides that the denunciation will result in a significant increase in the level of contributions for the remaining Contracting States, any such State may, not later than 120 days before the date on which the denunciation takes effect, denounce this Protocol with effect from the same date.

Article 28

Termination

1 This Protocol shall cease to be in force on the date when the number of Contracting States falls below seven or the total quantity of contributing oil received in the remaining Contracting States, including the quantities referred to in Article 14(1), falls below 350 000 000 tons, whichever occurs earlier.

2 States which are bound by this Protocol on the day before the date it ceases to be in force shall enable the Supplementary Fund to exercise its functions as described in Article 29 and shall, for that purpose only, remain bound by this Protocol.

Article 29

Winding up of the Supplementary Fund

1 If this Protocol ceases to be in force, the Supplementary Fund shall nevertheless:

Changes to legislation: There are currently no known outstanding effects for the 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). (See end of Document for details)

2 The Assembly shall take all appropriate measures to complete the winding up of the Supplementary Fund, including the distribution in an equitable manner of any remaining assets among those persons who have contributed to the Supplementary Fund.

3 For the purposes of this Article the Supplementary Fund shall remain a legal person.

Article 30

Depositary

1 This Protocol and any amendments accepted under Article 24 shall be deposited with the Secretary-General.

2 The Secretary-General shall:

3 As soon as this Protocol enters into force, the text shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

Article 31

Languages

This Protocol is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT LONDON this sixteenth day of May, two thousand and three.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments for that purpose, have signed this Protocol.

Changes to legislation: *There are currently no known outstanding effects for the 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). (See end of Document for details)*

- (1) Assent of 12 February 2004 (not yet published in the Official Journal).
- (2) [OJ L 12, 16.1.2001, p. 1.](#)
- (3) See Commission Declaration.

Changes to legislation:

There are currently no known outstanding effects for the 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).