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DEVELOPMENTS WITHIN THE EUROPEAN UNION

Note by the Director

Summary:	Recent developments in respect of a proposed European Union Directive on environmental liability are reported. A proposal has been prepared by the Council of the European Union authorising European Union Member States to become parties to the Supplementary Fund Protocol.
Action to be taken:	Information to be noted.

1 Introduction

- 1.1 At its 6th extraordinary session, held in April/May 2002, the Assembly took note of a proposal by the Commission of the European Communities for a Directive on Environmental Liability with regard to the prevention and remedying of environmental damage. It was noted that the proposed Directive would not apply to environmental damage or any imminent threat of such damage from an incident in respect of which liability or compensation was regulated by *inter alia* the 1992 Civil Liability Convention and the 1992 Fund Convention. It was also noted that the proposed Directive would be considered by the European Parliament and Council and therefore was still subject to change. This document contains information on the developments in respect of this Directive.
- 1.2 Information is also given on a proposal for a Council Directive authorising European Union Member States to ratify the 2003 Supplementary Fund Protocol.

2 Proposal for a Directive on environmental liability

- 2.1 As reported in document 92FUND/A/ES.6/6 to the Assembly's April/May 2002 session the European Commission had in January 2002 adopted a proposal for a Directive on environmental liability.
- 2.2 On 2 September 2003 the Council of the European Union adopted a common position with a view to the adoption of a Directive of the European Parliament and of the Council on environmental liability. The adoption of the common approach followed negotiations within the Council and the first reading in the European Parliament. The purpose of the Directive is to establish a framework of environmental liability based on the 'polluter-pays' principle, to prevent and remedy

environmental damage. The Directive applies to environmental damage caused by activities listed in Annex III to the Directive, such as, but not limited to, various installations, waste management, discharges of pollutants into ground water and transport by road, rail, inland waterways, sea or air of dangerous goods or polluting goods as defined in other European Community Directives. The Directive further applies to damage to protected species and natural habitats caused by certain occupational activities, other than those listed in Annex III.

2.3 Article 4 of the Directive provides that the Directive shall not apply to environmental damage or to any imminent threat of such damage arising from an incident in respect of which liability or compensation falls within the scope of any of the International Conventions listed in Annex IV to the Directive, including any future amendments thereof, which is in force in the Member State concerned. These Conventions are:

- the 1992 Civil Liability Convention
- the 1992 Fund Convention
- the 1996 HNS Convention
- the 2001 Convention on Civil Liability for Bunker Oil Pollution Damage
- the 1989 Convention on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigations Vessels (CLNI)

2.4 In addition, Article 4 provides that the Directive shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the 1978 Convention on Limitation for Liability for Maritime Claims (LLMC), or the 1988 Convention on Limitation of Liability in Inland Navigation (CLNI), including any future amendments to these Conventions.

2.5 Article 18 of the Directive instructs the European Commission, on the basis of reports received from the Member States of the European Union, to submit before the expiry of ten years after the entry into force of the Directive, a report to the European Parliament and to the Council, which shall include any appropriate proposal for amendments. This report shall also include a review of the application of, *inter alia*, Article 4, paragraph 2 of the Directive in relation to the exclusion of pollution covered by the international instruments listed in Annex IV. This review shall be carried out in light of the experiences gained within relevant international fora. The review shall also take into account all relevant instances of environmental damage resulting from such activities and the remedial action taken.

2.6 The common approach of the Council has been submitted to the European Parliament for its second reading, and this reading commenced in September 2003.

3 Proposal for a Council Decision authorising European Union Member States to become parties to the 2003 Supplementary Fund Protocol

3.1 Under European Council Resolution N°44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the European Commission has exclusive competence in these fields. As a consequence, the European Union Member States no longer have competence to become parties to instruments which, as in the case of the Supplementary Fund Protocol, affect the Community legislation in the field of jurisdiction and recognition and enforcement of judgements. It follows from this that only the Community is competent to enter into international commitments in this field.

3.2 Since the European Community itself cannot become party to the Supplementary Fund Protocol, the Commission presented on 8 September 2003 a proposal for a Council Decision authorising European Union Member States to sign, ratify or accede to the Supplementary Fund Protocol (document COM(2003)534 final). Under the draft decision, European Union Member States should take the necessary steps to consent to be bound by the Protocol as soon as possible, and in any case before the end of 2003.

- 3.3 The draft decision authorises Austria and Luxembourg, which are not parties to the 1992 Civil Liability Convention and the 1992 Fund Convention, to accede to these instruments. The draft decision further provides that they should take the necessary steps to express their consent to be bound by the Supplementary Fund Protocol before 31 December 2005.
- 3.4 The draft decision finally provides that the European Union Member States shall, at the earliest opportunity, use their best endeavours to ensure that the 1992 Conventions and the Supplementary Fund Protocol be amended in order to allow the European Community to become a Party to them.
- 3.5 The Council has not yet taken a decision on the proposal.

4 Actions to be taken by the Assembly

The Assembly is invited to take note of the information contained in this document.
