



International Oil Pollution
Compensation Funds

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PROPOSED CONSIDERATION OF A VOLUNTARY SUPPLEMENTARY FUND FOR ENVIRONMENTAL DAMAGE WITHIN THE IOPC FUNDS

Technical note by the Conference of Peripheral Maritime Regions (CPMR) Secretariat

Summary:	<p>During the IOPC Funds' meetings in April 2016, there was a discussion on the proposal for IOPC Funds' Guidelines concerning environmental damage.</p> <p>At that time, the CPMR proposed the establishment within the IOPC Fund of a supplementary voluntary fund specifically for environmental damage.</p> <p>With the October meetings of the IOPC Funds in mind, where this discussion will be continued, this document recalls the CPMR proposal.</p> <p>The CPMR proposes that further consideration of recognition of environmental damage should take place in a working group within the IOPC Funds.</p>
Action to be taken:	<p><u>1992 Fund Assembly and Supplementary Fund Assembly</u></p> <p>Take note of the information provided in this document.</p>

1 Growing recognition of environmental damage

- 1.1 The case law of the *Erika* and *Prestige* is marked by important changes in the recognition of environmental damage:
- a) *Erika*. In September 2012, the French *Cour de Cassation* (Court of Cassation), in the *Erika* case, recognized the existence of specific environmental damage and allowed compensation for that damage of €13 million.
 - b) *Prestige*. In January 2016, the Spanish Supreme Court ruled that the master of the *Prestige* was criminally liable for damage caused to the environment and, also, that he was liable in civil law, as was the shipowner. The quantum of the damages is currently being assessed. The Government claimed some €1 214 billion for environmental damage.

1.2 In European institutions, the debate on recognition of environmental damage to marine waters was reflected recently by:

- a) The vote, on 8 September 2015 by the European Parliament, on a [resolution](#) calling for the adoption by the European Union “of an “Erika IV” package on maritime safety to prevent further major maritime disasters; considers that this package should recognise the ecological damage to marine waters in European legislation .”
- b) A [report](#) published in April 2016 by the European Commission on the implementation of the European Environmental Liability Directive (ELD). This report indicates that the ELD and international conventions, including the Civil Liability Convention (CLC) “apply different remediation standards”. It also indicates that the European Commission “will consider further exploring whether the different remediation standards can be addressed by non-legislative means, in particular by working towards a common understanding of concepts, for example through interpretation within the 'Claims Manual' of the IOPC Funds and/or within fora composed of the Parties to the Conventions”.

1.3 A preparatory [study](#) February 2014 for this European Commission report, however, proposed ending the exclusion of the application of ELD in favour of the CLC/Fund Conventions.

2 A need for legal certainty and consistent regulations

2.1 The coverage of environmental damage in the case law of the *Erika* and *Prestige* is associated with exclusion of the application of the CLC/Fund Conventions because of the absence of recklessness.

2.2 The consequence of this is that it is national rules, and not those of the CLC/Fund Conventions, that are applied to establish the amount of loss covered.

2.3 The result is legal uncertainty for shipping companies, which are not covered by the same rules from one country to another. Moreover, there is the risk of their being subject to extremely large amounts of compensation in the absence of the application of the ceilings contained in the CLC/Fund Conventions.

2.4 This also raises questions within the IOPC Funds. The *Erika* judgment raised concerns as to the uniformity of the application of the CLC/Fund Conventions, expressed in the discussions which followed the *Erika* judgment.

2.5 The *Prestige* case is also the subject of current discussion, and even disagreement, concerning the compatibility of Spanish law with the CLC/Fund Conventions.

3 Proposed voluntary supplementary fund

3.1 The establishment of a voluntary supplementary fund within the IOPC Funds could be a solution to the need to provide a framework for coverage of environmental damage.

3.2 An international framework would further have the advantage of steering environmental damage claims to the IOPC Funds which currently receive few such claims, due to the priority given to economic loss.

3.3 The role of the supplementary fund would be to compensate losses relating to the loss of ecosystem services from the moment when the damage is caused until restoration of normal functioning of the affected ecosystems.

- 3.4 This fund would not have to compensate environmental damage as such, but only the estimated cost arising from the loss of ecosystem services.
- 3.5 This would be possible provided that baselines are available. In Europe, for example, major work on evaluating the ecological state of marine waters is in progress in the framework of the implementation of the Marine Strategy Framework Directive (MSFD). The information collected could contribute to the establishment of baselines which could be used to evaluate the impact of national policies on the marine environment.

4 Action to be taken

1992 Fund Assembly and Supplementary Fund Assembly

1992 Fund Assembly and Supplementary Fund Assembly are invited to take note of the information provided in this document.
