



International Oil Pollution
Compensation Funds

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1992 Fund Assembly	92A30	●
1992 Fund Executive Committee	92EC85	
Supplementary Fund Assembly	SA22	●

MEASURES ENCOURAGING THE SUBMISSION OF OIL REPORTS

PROPOSED AMENDMENTS TO 1992 FUND ASSEMBLY RESOLUTION N°12 AND SUPPLEMENTARY FUND ASSEMBLY RESOLUTION N°3

Note by the Director

Summary:

This document proposes amendments to 1992 Fund Assembly Resolution N°12 and Supplementary Fund Assembly Resolution N°3 to incorporate measures addressing financial losses sustained by the IOPC Funds as a result of a Member State's non-compliance with its reporting obligations.

While the current Resolutions address non-submission of oil reports and non-payment of contributions, they lack provisions to address a direct financial loss to the Funds due to a Member State's failure to fulfil its reporting obligations. Such financial loss is expressly referred to in Article 15.4 of the 1992 Fund Convention and Article 13.2 of the Supplementary Fund Protocol.

The proposed amendments include additions to the preamble sections, the introduction of new operative paragraphs allowing for deferral of compensation payments in cases where financial loss has occurred, and the revision of existing provisions on eligibility to nominate candidates for membership of the Audit Body and to be elected as members of the 1992 Fund Executive Committee. The proposed amendments are intended to ensure that a Member State which causes financial loss to the IOPC Funds is subject to all measures under the respective Resolutions until the situation is rectified. The proposed amendments are set out in Annexes I and II.

Action to be taken:

1992 Fund Assembly

- (a) Take note of the information contained in this document; and
- (b) Decide whether to amend 1992 Fund Assembly Resolution N°12 as proposed in Annex I.

Supplementary Fund Assembly

- (a) Take note of the information contained in this document; and
- (b) Decide whether to amend Supplementary Fund Assembly Resolution N°3 as proposed in Annex II.

1 Introduction

- 1.1 1992 Fund Assembly Resolution N°12 and Supplementary Fund Assembly Resolution N°3 were adopted in April 2016 to encourage Member States to fulfil their obligations under the 1992 Fund Convention and the Supplementary Fund Protocol, particularly regarding the submission of oil reports and the payment of contributions. These Resolutions recognise that the proper functioning of the international liability and compensation regime depends on the effective implementation of the Convention and Protocol by Member States and the corresponding fulfilment of their obligations under the treaties.
- 1.2 Both Resolutions introduced measures to encourage compliance with the rules on reporting and payment of contributions. In the event that a Member State has outstanding oil reports for two or more years, or has contributors in arrears with their payments for two or more years, sanctions may be applied. Any claim submitted by the administration of that Member State or a public authority working directly on the response or recovery for the pollution incident on behalf of that Member State, will have its claims assessed for admissibility, but payment will be deferred until the reporting or contribution payment deficiency is rectified. The Resolutions also provide restrictions on the participation of non-compliant Member States in the 1992 Fund Executive Committee and the Audit Body.
- 1.3 While the Resolutions address the issues described in paragraph 1.2 above, they do not currently include provisions to address a direct financial loss to the IOPC Funds due to a Member State's failure to fulfil its reporting obligations. Such financial loss is expressly referred to in Article 15.4 of the 1992 Fund Convention and Article 13.2 of the Supplementary Fund Protocol, which provides that a Member State shall be liable to compensate the Funds for loss resulting from its failure to meet its reporting obligations.
- 1.4 Therefore, even if the IOPC Funds experience quantifiable financial loss due to a breach of reporting obligations, the current Resolutions do not provide a mechanism to encourage the Member State concerned to address the issue and compensate the Funds for any such loss.

2 Proposed amendments to 1992 Fund Assembly Resolution N°12 and Supplementary Fund Assembly Resolution N°3

- 2.1 This document sets out proposed amendments to 1992 Fund Assembly Resolution N°12 and Supplementary Fund Assembly Resolution N°3 to incorporate measures addressing financial losses incurred by the Funds as a result of non-compliance with reporting obligations.
- 2.2 The proposed amendments establish that, if it is determined that a Member State has caused a financial loss to the IOPC Funds due to not fulfilling its reporting obligations, irrespective of when the breach occurred, that Member State shall be subject to all the measures provided under the relevant Resolution until compliance is achieved. These measures include the deferral of compensation payments, ineligibility for election to the 1992 Fund Executive Committee and ineligibility to nominate candidates for the Audit Body.
- 2.3 The amendments proposed to 1992 Fund Assembly Resolution N°12 and Supplementary Fund Assembly Resolution N°3 include measures to address financial loss to the IOPC Funds resulting from a Member State's failure to comply with its obligations under Article 15.1 and 15.2 of the 1992 Fund Convention. The proposed amendments to 1992 Fund Assembly Resolution N°12 are set out at Annex I. Corresponding proposed amendments to Supplementary Fund Assembly Resolution N°3 are set out at Annex II.

3 Director's considerations

- 3.1 The Director has regularly expressed his commitment to ensuring as far as possible that the international liability and compensation regime functions as intended. To this end, he has made every effort to implement the various measures adopted by the governing bodies over the years to encourage the submission of oil reports and the payment of contributions, in particular those outlined in 1992 Fund Assembly Resolution N°12 and Supplementary Fund Assembly Resolution N°3. He has found these to have been effective, with a number of States responding positively and actively, leading to the resolution of outstanding issues in several cases.
- 3.2 The Director considers that adding further measures to the Resolutions to encourage any Member State to compensate the IOPC Funds for any such loss incurred as a result of a breach of reporting obligations would be very useful. He therefore invites the governing bodies to consider amending the Resolutions accordingly.

4 Action to be taken

4.1 1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) take note of the information contained in this document; and
- (b) decide whether to amend 1992 Fund Assembly Resolution N°12 as proposed in Annex I.

4.2 Supplementary Fund Assembly

The Supplementary Fund Assembly is invited to:

- (a) take note of the information contained in this document; and
- (b) decide whether to amend Supplementary Fund Assembly Resolution N°3 as proposed in Annex II.

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ANNEX I

Proposed amendments to 1992 Fund Assembly Resolution N°12

(proposed new text is underlined)

Measures in respect of outstanding oil reports and outstanding contributions

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund)

RECALLING that the International Fund for Compensation for Oil Pollution Damage, 1992 (the 1992 Fund) was established by the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (the 1992 Fund Convention) in order to ensure that adequate compensation is available to persons who suffer damage caused by pollution resulting from the escape or discharge of oil from ships,

NOTING the obligation of States Parties pursuant to Article 15 of the 1992 Fund Convention to communicate to the Director of the Fund (the Director), at a time and in the manner provided in the Internal Regulations, the name and address of any person who in respect of those States is liable to contribute to the 1992 Fund pursuant to Article 10 of the 1992 Fund Convention, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year (oil reports),

MINDFUL, in order to secure adequate compensation, of the need to ensure payment of annual contributions to the 1992 Fund as required by Article 10 of the 1992 Fund Convention,

NOTING also the duty of States Parties pursuant to Article 13.2 of the 1992 Fund Convention to ensure that any obligation to contribute to the 1992 Fund arising under the Convention in respect of oil received within the territory of those States is fulfilled and to this end to take appropriate measures under their law,

AWARE that, where States Parties are in breach of their obligations under Article 13.2 or Article 15 of the 1992 Fund Convention, then those States Parties bear a responsibility to the 1992 Fund under public international law,

NOTING FURTHER that, where a State Party does not fulfil its obligations under Article 15.1 and 15.2 of the 1992 Fund Convention, and this results in a financial loss for the 1992 Fund, that State Party shall be liable to compensate the 1992 Fund for such loss, in accordance with Article 15.4 of the 1992 Fund Convention,

BEARING IN MIND that the 1992 Fund cannot carry out its mandate nor operate effectively unless accurate oil reports and contributions are received in a timely manner,

RECALLING the decision taken in October 2008 by the 1992 Fund Assembly at its 13th session to adopt a policy whereby, in the event that a State is two or more oil reports in arrears, any claim submitted by the Administration of that State or a public authority working directly on the response or recovery from the pollution incident on behalf of that State will be assessed for admissibility but payment will be deferred until the reporting deficiency is rectified,

RECALLING also Resolution N°11—Measures in respect of Contributions (October 2009),

- 1 **ENDORSES** the current efforts of the Director to follow up on arrears of oil reports and contributions;
- 2 **CALLS ON** all receivers of contributing oil to discharge their obligations under the 1992 Fund Convention in a timely manner;
- 3 **URGES** associations representing receivers of contributing oil to engage proactively in ensuring that industry members meet their obligations and to report to the Director on the measures taken in this regard;

- 4 **FURTHER URGES** all States Parties to fulfil their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention, in particular, to provide oil reports in a timely and accurate manner and to ensure payment of contributions;
- 5 **REMINDS** States Parties of the option contained in Article 14.1 of the 1992 Fund Convention whereby a State Party may at any time declare that it assumes the obligation to make contributions to the 1992 Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Convention;
- 6 **REQUESTS** those State Parties which have outstanding oil reports or which have contributors that are in arrears with their payments to report to the Director on any steps they have taken to redress these situations;
- 7 **INSTRUCTS** the Director:
 - (a) in consultation with the Audit Body, to examine the reports referred to in paragraphs 4 and 6 above and to present any recommendations to the 1992 Fund Assembly;
 - (b) to report at each regular session of the 1992 Fund Assembly the names of those States which have not provided oil reports or which have not taken steps to ensure the timely payment of contributions; and
 - (c) to include in such reports an account of what actions, if any, have been taken by the States referred to in sub-paragraph (b) in the previous 12 month period in response to any request made by the Director to rectify the situation;
- 8 **DECIDES** that it shall make a determination as to those States that are responsible for two or more oil reports in arrears, in which event any claim submitted by the Administration of those States, including a claim submitted by a public authority working directly on the response or recovery for the pollution incident on behalf of those States, will be assessed for admissibility, but actual payment will be deferred pending rectification of the reporting deficiency;
- 9 **DECIDES ALSO** that it shall make a determination as to those States that are found to be in breach of their obligations under Article 13.2 of the 1992 Fund Convention for two or more years, in which event any claim submitted by the Administration of those States, including a claim submitted by a public authority working directly on the response or recovery for the pollution incident on behalf of those States, will be assessed for admissibility, but actual payment will be deferred pending rectification of the breach;
- 10 **DECIDES FURTHER** that it shall make a determination as to those States that have caused a financial loss for the 1992 Fund as a result of their failure to comply with obligations under Article 15 of the 1992 Fund Convention, in which event any claim submitted by the Administration of those States, including a claim submitted by a public authority working directly on the response or recovery for the pollution incident on behalf of those States, will be assessed for admissibility, but actual payment will be deferred until the issue of the financial loss has been addressed and resolved by the State.
- ~~1011~~ **DECIDES FURTHER** that it shall make a determination as to those States that are found to be in breach of their obligations under Articles 13.2, 15.1 or 15.2 of the 1992 Fund Convention, or those that have caused a financial loss for the 1992 Fund as a result of not fulfilling their obligations under Article 15.1 and 15.2 of the 1992 Fund Convention, in which event those States shall not be eligible to nominate candidates for membership of the Audit Body nor to be elected as members of the 1992 Fund Executive Committee;

1112 **INSTRUCTS** the Director to develop guidelines in relation to implementation by States Parties of their obligations under Articles 13.2, 15.1 and 15.2 of the 1992 Fund Convention;

1213 **DIRECTS** the Audit Body to:

- (a) monitor the effectiveness of the above actions in respect of outstanding oil reports and outstanding contributions; and
- (b) report to the 1992 Fund Assembly on its findings, including recommendations for further measures as may be warranted;

1314 **REVOKES** Resolution N°11 of the 1992 Fund Assembly (October 2009) to the extent that it affects the 1992 Fund.

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ANNEX II

Proposed amendments to Supplementary Fund Assembly Resolution N°3

(proposed new text is underlined)

Measures in respect of outstanding contributions

THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION SUPPLEMENTARY FUND, 2003 (Supplementary Fund)

RECALLING that the International Oil Pollution Compensation Supplementary Fund, 2003 (the Supplementary Fund) was established by 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) in order to ensure that victims of oil pollution damage are compensated in full for their loss or damage in cases where there is a risk that the amount of compensation available under the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the International Convention on the Establishment of an International Fund for Oil Pollution Damage, 1992 (the 1992 Fund Convention) will be insufficient,

MINDFUL, in order to secure full compensation, of the need to ensure payment of annual contributions to the Supplementary Fund as required by Article 10 of the Supplementary Fund Protocol,

NOTING the duty of States Parties pursuant to Article 12.1 of the Supplementary Fund Protocol to ensure that any obligation to contribute to the Supplementary Fund arising under the Protocol in respect of oil received within the territory of those States is fulfilled and to this end to take appropriate measures under their law,

AWARE that, where States Parties are in breach of their obligations under Article 12.1 of the Supplementary Fund Protocol, then those States Parties bear a responsibility to the Supplementary Fund under public international law,

NOTING ALSO that, where a State Party does not fulfil its obligations under Article 13.1 of the Supplementary Fund Protocol, and this results in a financial loss for the Supplementary Fund, that State Party shall be liable to compensate the Supplementary Fund for such loss, in accordance with Article 13.2 of the Supplementary Fund Protocol,

BEARING IN MIND that the Supplementary Fund cannot carry out its mandate nor operate effectively unless contributions are received in a timely manner,

RECALLING Supplementary Fund Resolution N°2—Measures in respect of Contributions (October 2009),

RECALLING FURTHER 1992 Fund Resolution N°11—Measures in respect of Contributions (October 2009),

- 1 **ENDORSES** the current efforts of the Director of the Supplementary Fund (the Director) to follow up on arrears of contributions;
- 2 **CALLS ON** all receivers of contributing oil to discharge their obligations under the Supplementary Fund Protocol in a timely manner;
- 3 **URGES** associations representing receivers of contributing oil to engage proactively in ensuring that industry members meet their obligations and to report to the Director on the measures taken in this regard;
- 4 **FURTHER URGES** all States Parties to fulfil their obligations under Article 12.1 of the Supplementary Fund Protocol, in particular, to ensure payment of contributions;

- 5 **REMINDS** States Parties of the option contained in Article 12.2 of the Supplementary Fund Protocol whereby a State Party may at any time declare that it assumes the obligation to make contributions to the Supplementary Fund that are otherwise incumbent on persons pursuant to Article 10.1 of the Protocol;
- 6 **REQUESTS** those State Parties which have contributors that are in arrears with their payments to report to the Director on any steps they have taken to redress the situation;
- 7 **INSTRUCTS** the Director:
- (a) in consultation with the Audit Body, to examine the reports referred to in paragraph 6 above and to present any recommendations to the Supplementary Fund Assembly;
 - (b) to report at each regular session of the Supplementary Fund Assembly the names of those States which have not taken steps to ensure the timely payment of contributions; and
 - (c) to include in such reports an account of what actions, if any, have been taken by the States referred to in sub-paragraph (b) in the previous 12 month period in response to any request made by the Director to rectify the situation;
- 8 **DECIDES** that it shall make a determination as to those States that are found to be in breach of their obligations under Article 12.1 of the Supplementary Fund Protocol for two or more years, in which event any claim submitted by the Administration of those States or public authority working directly on the response or recovery for the pollution incident on behalf of those States will be assessed for admissibility, but actual payment will be deferred pending rectification of the breach;
- 9 **DECIDES ALSO** that, it shall make a determination as to those States that have caused a financial loss for the Supplementary Fund as a result of their failure to comply with obligations under Article 13.1 of the Supplementary Fund Protocol, in which event any claim submitted by the Administration of those States, including a claim submitted by a public authority working directly on the response or recovery for the pollution incident on behalf of those States, will be assessed for admissibility, but actual payment will be deferred until the issue of the financial loss has been addressed and resolved by the State.
- 910 **INSTRUCTS** the Director to develop guidelines in relation to implementation by States Parties of their obligations under Article 12.1 of the Supplementary Fund Protocol;
- 1011 **DIRECTS** the Audit Body to:
- (a) monitor the effectiveness of the above actions in respect of outstanding contributions; and
 - (b) report to the Supplementary Fund Assembly on its findings, including recommendations for further measures as may be warranted;
- 1112 **REVOKES** Supplementary Fund Resolution N°2 and 1992 Fund Resolution N°11 (October 2009) to the extent that these Resolutions affect the Supplementary Fund.
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