



International Oil Pollution  
Compensation Funds

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| <b>Agenda Item 3</b>                 | IOPC/APR19/3/2/1 |   |
| <b>Date</b>                          | 25 March 2019    |   |
| <b>Original</b>                      | English          |   |
| <b>1992 Fund Assembly</b>            | 92AES23          |   |
| <b>1992 Fund Executive Committee</b> | 92EC72           | ● |
| <b>Supplementary Fund Assembly</b>   | SAES7            |   |

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### PRESTIGE

#### Note by the Secretariat

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| <b>Objective of document:</b> | To update the 1992 Fund Executive Committee in respect of this incident since the publication of document <a href="#">IOPC/APR19/3/2</a> .   |
| <b>Summary:</b>               | <p>The Court in charge with the enforcement of the judgment has issued an order requesting the 1992 Fund to pay the limit of its liability after deducting the amounts already paid, i.e. €28 million.</p> <p>For the reasons explained in the document, the Director proposes that the Executive Committee authorises him to pay to the Spanish Court €28 million less €800 000 which should be kept available to pay any judgments by the French courts and €4 800 to pay the Portuguese Government so that the principle of equal treatment between claimants is maintained.</p> <p>The Director intends to provide the Court with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (for the amounts to be paid under the 1992 Fund Convention) and 2.57% (for compensation available under the 1992 Civil Liability Convention).</p> |
| <b>Action to be taken:</b>    | <p><u>1992 Fund Executive Committee</u></p> <p>To authorise the Director to pay to the Spanish Court €28 million less:</p> <ul style="list-style-type: none"> <li>(i) €800 000 which should be kept available to pay any judgments by French courts; and</li> <li>(ii) €4 800 which should also be kept available to pay the Portuguese Government to ensure that the principle of equal treatment between claimants is maintained.</li> </ul>   |

#### 1 Payment to the Court dealing with the enforcement of the judgment

- 1.1 As stated in document [IOPC/APR19/3/2](#), the Court in charge of the enforcement of the judgment has issued an order requesting the 1992 Fund to pay the limit of its liability after deducting the amounts already paid, i.e. €28 million and the Director is of the view that the 1992 Fund should comply with the judgment.

- 1.2 It is however the obligation of the 1992 Fund, under the 1992 Fund Convention, to treat all claimants equally and therefore it is necessary to keep an amount available to pay compensation to those claimants whose claims have not been dealt with by the Spanish judgment.
- 1.3 As stated in paragraph 4.3 of document [IOPC/APR19/3/2](#), there are 42 legal actions pending before the French courts. These actions, totalling €6.3 million, were brought shortly after the incident and have not been pursued awaiting a decision by the Spanish courts. Now that the Spanish courts have rendered their decision, it is possible that the claimants may decide to pursue their claims before the French courts. The proceedings before the French courts may take many years before they are finalised. The Director considers that it would be prudent for the 1992 Fund to keep €800 000 available to pay these claimants, should they obtain a judgment from the French courts.
- 1.4 In addition, the Portuguese Government whose claim has not been dealt with by the Spanish judgment, has been paid by the 1992 Fund €328 500 at 15% of the Government's established losses. As explained below, if the amount available for compensation from the limitation fund under the 1992 Civil Liability Convention (1992 CLC) and the amounts under the 1992 Fund are distributed correctly, the level of payments should be 15.22% and the Portuguese Government should therefore be entitled to receive 0.22% of its established losses. The Director also considers that the 1992 Fund should keep €4 800 (0.22% of the established losses) available to pay the Portuguese Government so that the principle of equal treatment between claimants is maintained.

## **2 Distribution of the amount to be paid by the 1992 Fund and the 1992 CLC limitation fund**

- 2.1 The judgment awarded losses against the 1992 Fund totalling €884.98 million but the judgment also awarded interest to the claimants in the proceedings. The judgment was rendered in 2019, almost 17 years after the incident, and the legal interest rate has varied between 3% and 5%. The losses recognised by the Spanish Court, i.e. €884.98 million, at the legal interest rate for a long period of time result in interest of some €264.9 million.
- 2.2 The established losses in respect of the *Prestige* incident totals €1 166.78 million. Deducting the amounts the 1992 Fund should keep for the claimants with legal proceedings pending before the French courts and for the Portuguese Government, the claimants in the Spanish legal proceedings should be entitled to receive 12.65% (€147.6 million/€1 166.78 million) of their established losses.
- 2.3 The Court would also have to distribute the 1992 CLC limitation fund i.e. €22.8 million. This amount should be distributed between claimants in the proceedings based on the amounts awarded by the Spanish Court, i.e. €884.98 million. The claimants in the Spanish proceedings should be entitled to receive 2.57% (€22.8 million/€884.9 million) of their established losses.
- 2.4 If the Spanish Court were to distribute the amounts available for compensation from the 1992 CLC and the 1992 Fund as suggested above, the claimants with amounts awarded by the Spanish Court would receive 2.57% from the 1992 CLC and 12.65% from the 1992 Fund, i.e. 15.22%.

## **3 Director's considerations**

- 3.1 The Director has had discussions with the Spanish and French Governments to find a solution to the complexities involved in this case. This solution should allow the 1992 Fund to pay the balance of €28 million available for compensation.
- 3.2 The Director recommends that the 1992 Fund complies with the Spanish Court order and proposes that the Executive Committee authorises him to pay to the Spanish Court €28 million less €800 000 which should be kept available to pay any judgments by the French courts and €4 800 also kept available to pay the Portuguese Government at 0.22% of the established losses.

- 3.3 The Director intends to provide the Court dealing with the enforcement of the judgment with a list of the amounts due to the claimants in the Spanish legal proceedings prorated at 12.65% (1992 Fund) and 2.57% (1992 CLC).
- 3.4 The final level of payments will not be confirmed until the legal proceedings in France have been resolved and considering the distribution made by the Court. At that time, the Executive Committee will have to decide how to distribute the balance of €800 000 that would have not been used to pay compensation in France and whether €4 800 is due to the Portuguese Government.

**4 Action to be taken**

1992 Fund Executive Committee

1992 Fund Executive Committee is invited to:

- (a) take note of the information contained in this document; and
- (b) authorise the Director to pay to the Spanish Court €28 million less:
- (i) €800 000 which should be kept available to pay any judgments by French courts; and
  - (ii) €4 800 which should also be kept available to pay the Portuguese Government to ensure that the principle of equal treatment between claimants is maintained.
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