



International Oil Pollution
Compensation Funds

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1992 Fund Assembly	92A26	●
1992 Fund Executive Committee	92EC77	
Supplementary Fund Assembly	SA18	●

EUROPEAN UNION GENERAL DATA PROTECTION REGULATION

Note by the Secretariat

Summary:	This document provides recent developments on the application of the General Data Protection Regulation (GDPR) of the European Union and Directive 2016/680 (Directive) to the IOPC Funds and the Secretariat's engagement towards the implementation of the IOPC Funds' data protection system.
Action to be taken:	<u>1992 Fund Assembly and Supplementary Fund Assembly</u> Information to be noted.

1 Background information

- 1.1 The European Union Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the General Data Protection Regulation (GDPR) and the accompanying Directive 2016/680 (Directive)^{<1>}, have been applied within the European Union (EU) as of 25 May 2018. The GDPR and the Directive seek to protect fundamental rights and freedoms of natural persons relating to the collection and processing of their personal data^{<2>} and to allow for the free movement of personal data within the EU.
- 1.2 Due to the nature of the work of the IOPC Funds, the collection of personal data is required, in particular with regard to the payment of compensation to victims of oil pollution and the receipt of oil reports from Member States. Against this background, and since the IOPC Funds are international intergovernmental organisations, the Director requested the European Commission for clarification on the application of the GDPR and the Directive to the IOPC Funds. The Director received a response from the European Commission stating that the application depends on the privileges and immunities applicable under the Headquarters Agreement.
- 1.3 Following the reply, the Secretariat sought a clarification from the United Kingdom (UK) Government on the application of the GDPR and the Directive in light of the existing Headquarters Agreement. The reply from the UK Government indicated that the GDPR applies to the IOPC Funds and that the IOPC Funds can have their own position as to its application. The Secretariat retained the services of

^{<1>} The Directive lays down the rules relating to the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

^{<2>} According to Article 4.1 of the GDPR, 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

a data protection lawyer to advise upon the application of the GDPR and the Directive, and to advise generally in relation to the policies and procedures to be implemented by the IOPC Funds.

- 1.4 In accordance with the advice provided by the data protection lawyer, and based on the inviolability of archives stipulated in Article 6 of the Headquarters Agreement for the 1992 Fund, the Secretariat believes that the GDPR will not apply to the IOPC Funds. Nevertheless, the Secretariat believes that it would be good practice for the IOPC Funds to apply the same principles as the GDPR and ensure that similar internal policies and procedures regarding data protection are in place.
- 1.5 In December 2019, the Secretariat engaged an expert in implementing the GDPR in order to receive assistance with developing policies and procedures reflecting the data protection principles laid out by the GDPR. The Secretariat has since been working on the introduction of a data protection system, which substantially implements the GDPR.
- 1.6 Following the departure of the UK from the EU on 31 January 2020, the UK has maintained the data protection standards that existed under the GDPR and the UK's Data Protection Act 2018 by means of legislation. On 28 June 2021, the European Commission adopted two "adequacy decisions" for the UK, thereby recognising that UK data protection legislation provides an essentially equivalent level of protection to that guaranteed under EU law. The decisions permit the free flow of personal data between the UK and EU and are subject to a review after a period of four years.

2 Recent developments

- 2.1 The Secretariat has identified the personal data which the Funds hold, drafted a Data Protection Policy, Data Privacy Notices for claimants, General Data Privacy Notice for all other persons who have dealings with the Funds, and a Data Classification and Retention Policy, in order to govern both the data previously retained, and further data to be collected in the future. The policies and procedures have been reviewed by the data protection lawyer engaged by the IOPC Funds.
- 2.2 The Secretariat has also considered the provisions necessary to be inserted in various types of contracts which the Funds conclude, including contracts for the experts in the claims-handling process.
- 2.3 In addition, the Secretariat has engaged an IT support team to assist with the implementation of the Microsoft Information Protection (MIP) suite of IT programs, which enables a phased approach^{<3>} to be adopted, and which identifies sensitive information and defines the security and controls to be applied to the data.
- 2.4 With the assistance of the expert engaged to implement the GDPR, the Staff of the IOPC Funds have received preliminary training upon the concept of data protection, which will be expanded upon with further department-specific training, using the MIP when fully installed, to ensure that each individual is aware of their duties and responsibilities under the IOPC Funds' data protection system.
- 2.5 The Secretariat has made substantial progress with the tasks and continues to develop the application of the data protection system, with the aim of implementing the policies and procedures completely during the course of 2022, and will report developments at future sessions of the governing bodies.

<3> The phased approach involves: (1) undertaking existing data discovery and classification; (2) resolving data classification and security across all of the Funds' data and devices; (3) training upon implementation; and (4) adoption of data protection and retention policies.

3 Action to be taken

1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited to take note of the information.
