



International Oil Pollution
Compensation Funds

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EUROPEAN UNION GENERAL DATA PROTECTION REGULATION

Note by the Secretariat

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| Summary: | This document provides recent developments on the application of the General Data Protection Regulation of the European Union and Directive 2016/680 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 (EU) Regulation 2016/679 adopted by the European Parliament and the Council of the EU on 27 April 2016, on the General Data Protection Regulation (GDPR), and the accompanying Directive 2016/680 (the Directive)^{<1>}, have been applied within the 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 regarding 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 clarification from the European Commission 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 1992 Fund and Supplementary Fund Headquarters Agreements.

<1> The Directive lays down the rules relating to the protection of natural persons regarding 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.

- 1.3 Following the European Commission response, the Secretariat sought a clarification from the United Kingdom (UK) Government on the application of the GDPR and the Directive considering the existing Headquarters Agreements for the 1992 Fund and Supplementary Fund. 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 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 4 of the Headquarters Agreements for the 1992 Fund and Supplementary 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 to receive assistance with developing policies and procedures reflecting the data protection principles laid out by the GDPR. Since then, the Secretariat has 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 already 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, to govern both the data previously retained, and further data to be collected in the future. The policies and procedures were reviewed by the data protection lawyer engaged by the IOPC Funds.
- 2.2 The Secretariat has also considered the provisions necessary to be inserted into various types of contracts which the Funds conclude, including contracts for the experts in the claims-handling process.
- 2.3 In addition, the Secretariat 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 principles of the GDPR, the staff members of the Secretariat have received preliminary training on the concept of data protection, which included training relating to staff members' obligations under the GDPR, and discussion of the actions required under specific scenarios which may occur in the lifetime of data usage within the IOPC Funds. Subsequently, department-specific training will be provided to staff members, using the MIP when fully installed, to ensure that each individual is aware of their ongoing duties and responsibilities under the

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

IOPC Funds' data protection system.

- 2.5 The Secretariat has continued to make substantial progress with the tasks required for implementing the principles of the GDPR, and has completed the design and implementation of an IT training platform upon which staff have been trained further during the last quarter of 2023 and first quarter of 2024. Staff training will continue throughout the forthcoming year, in readiness for the full implementation of the system and subsequent adoption of the data protection and retention policies.
- 2.6 The Secretariat will report developments at future sessions of the governing bodies.

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 contained in this document.
