



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
5th session
Agenda item 8

92FUND/A.5/5
15 August 2000
Original: ENGLISH

EUROPEAN COMMISSION'S WHITE PAPER ON ENVIRONMENTAL LIABILITY

Note by the Director

Summary:	The Director has presented comments to the Commission of the European Community on the Commission's White Paper on Environmental Liability.
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Action to be taken:	Information to be noted.
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- 1 At its 4th extraordinary session, the Assembly took note of a document presented by the Director relating to a White Paper on Environmental Liability prepared by the Commission of the European Community (document 92FUND/A.ES/4/4).
- 2 The Assembly noted that the Commission had invited comments on the White Paper by 1 July 2000. The Director was instructed to present comments on behalf of the 1992 Fund, drawing the Commission's attention to the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention and emphasising the importance that any action by the Commission should not prejudice or undermine the operation of this regime. It was stated that in his comments the Director should remain neutral on political issues and emphasise the positive aspects of the global regime.
- 3 In accordance with the Assembly's instructions the Director presented comments on the White Paper on 30 June 2000. The text of these comments is at the Annex.

Action to be taken by the Assembly

- 4 The Assembly is invited to take note of the information contained in this document.

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ANNEX

DIRECTOR'S COMMENTS ON THE WHITE PAPER

30 June 2000

In accordance with the instructions of the Assembly of the International Oil Pollution Compensation Fund 1992, I herewith submit the Organisation's observations on the White Paper on Environmental Liability prepared by the Commission of the European Community.

As mentioned in the White Paper (Section 4.8) there are several Conventions and Protocols dealing with liability for oil pollution. The international regime in this field was created under the auspices of the International Maritime Organization (IMO) and consisted originally of the 1969 Civil Liability Convention and the 1971 Fund Convention. These Conventions were modified by two Protocols in 1992, and the old regime is being replaced by the Conventions as amended by these Protocols (1992 Conventions).

All Member States of the European Union which have coastlines are Parties to the 1992 Conventions, with the exception of Portugal, which is still Party to the original Conventions but which is expected to ratify the 1992 Conventions in the near future. Several candidate States are also Parties to the 1992 Conventions. A list of the States Parties to the 1969, 1971 and 1992 Conventions as at 20 June 2000 is at the Annex. *[List omitted from Assembly document]*

As is indicated below the international regime is based on some of the principles referred to in the Commission's White Paper.

The international regime, based on the 1992 Conventions, is composed of a two tier compensation system. The 1992 Civil Liability Convention governs the liability of the registered owner of a tanker for pollution damage caused by oil escaping from the vessel. The owner has strict liability with only very limited defences. The Convention is therefore based on the 'polluter pays' principle. The shipowner is normally entitled to limit his liability to an amount which is calculated on the basis of the tonnage of the vessel. A tanker carrying more than 2 000 tonnes of persistent oil in bulk as cargo is obliged to maintain insurance covering the liability up to the limit of his liability, and the importance of insurance cover is addressed in the Commission's White Paper.

The 1992 Fund Convention establishes a system of supplementary compensation if the compensation actually paid by the shipowner and his insurer is insufficient to provide full compensation to the victims. The supplementary payments are made by an intergovernmental organisation set up under the 1992 Fund Convention, the International Oil Pollution Compensation Fund 1992. The total amount available under the 1992 Conventions is 135 million SDR (approximately 180 million Euro as at 20 June 2000). The Fund is financed by levies on the sea transport of certain types of persistent oil. Every company or other entity which receives such oil in the ports of a Member State after sea transport (whether from abroad or by cabotage) is liable to contribute to the respective Fund. The States have no responsibility for these contributions. The Fund is therefore based on the principle that the oil industry as a collective should provide the necessary funds, ie the 'polluter pays principle' in a collective sense.

It should be mentioned that the United Kingdom Government, supported by a number of other Governments, has submitted a proposal to the International Maritime Organization (IMO) to increase the limits in the 1992 Civil Liability Convention and the 1992 Fund Convention. This matter will be considered by the IMO Legal Committee in October 2000.

It should be noted that the international regime based on the 1992 Conventions is global in scope. It operates independent of the nationality of the ship or the ownership of the oil. The Conventions apply therefore to oil pollution in a State Party even if the ship from which the polluting oil escaped is registered in a State which is not Party to the Conventions.

The contributions to the Fund are paid mainly by the oil industry in the industrialised countries. Only a few developing countries pay any contributions (eg India and Malaysia) and most developing countries pay no contributions at all. Under the Fund Conventions the oil industry in developed countries contributes therefore to the protection of the marine environment in developing countries.

The Conventions cover pollution damage caused to property, costs of clean-up and measures to prevent or minimise pollution damage. They also cover economic loss caused by pollution, eg economic losses suffered by fishermen and by hotels and restaurants in coastal areas affected by oil pollution; in many Member States of the European Union such damage would not be compensated under national law. The Conventions do not cover damage to the environment as such. Compensation is available, however, for reasonable measures actually taken or to be taken to reinstate the polluted environment. As mentioned, economic losses resulting from damage to the environment, such as losses incurred by fishermen are also compensated. The White Paper attaches importance to compensation being granted for these types of cost or damage.

The international regime has been in force since 1978 and has been applied to over 100 oil spills in 18 countries. Compensation payments by the International Oil Pollution Compensation Funds 1971 and 1992 total over US\$400 million (400 million Euro).

Following a proposal by the French delegation at the 1992 Fund Assembly's session in April 2000, the Assembly established a Working Group to examine the adequacy of the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention. The French delegation made the point that although the system had worked well on many occasions there were inadequacies in the system. The Working Group will meet on 6 July 2000 for a preliminary exchange of views and to draw up a list of issues for further consideration.

The International Oil Pollution Compensation Fund 1992 would like to emphasise the importance that the Commission takes fully into consideration of the existing global regime based on the above-mentioned 1992 Conventions and that any action by it does not hamper the functioning of that regime.