



INTERNATIONAL
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COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
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Agenda item 8

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INCIDENTS INVOLVING THE 1971 FUND

AEGEAN SEA

Note by the Spanish delegation

1 Introduction

1.1 This document sets out the situation as regards the decision taken by the Spanish Government on 30 May 1997 to grant a new loan of Pts 12 500 million (£52 million) with low interest to the Spanish claimants given the current length of the delay (almost five years) in the payment of claims by the 1971 Fund in the *Aegean Sea* case. In the view of the Spanish Government, it is unfortunate that at this stage Spain, an important Member State of the Fund, has had to consider and adopt this new national mechanism for providing payments when compensation by the P & I Club involved and the 1971 Fund is delayed.

1.2 As the Committee may recall, the Spanish delegation, at the Executive Committee's sessions in June and October 1996, made statements containing criticism of the 1971 Fund's handling of the *Aegean Sea* incident. The Spanish delegation expressed the disappointment of the Spanish administration with the insufficient payments made to the Spanish claimants. From a Spanish perspective, the assessments made by the Fund's experts in the *Aegean Sea* case were excessively low and the request for evidence to substantiate the claimants' losses had been out of proportion. The records of decisions of these sessions are available and our position remains the same.

1.3 The Spanish administration regrets the fact that the Spanish claimants have had to wait for almost four years (until 30 April 1996) to have a preliminary decision rendered by the Spanish Criminal Court, which to some extent corrects the Fund's assessment. More than one year after the first judgement, on 16 June 1997, the Spanish administration is still of the opinion that the delay in payment has not been reasonable and that the course of action taken by the Fund's experts has been completely wrong. We have to say that the current gap between the payments already made (£8 million) and the maximum compensation available under the Conventions (£48 million) is extremely large. The Spanish administration also regrets that the payments made at an early stage were unfortunately not enough to alleviate the financial burden on many small businesses.

In this regard, the *Aegean Sea* case has always been and indeed still is an unprecedented social and political problem in Spain, and surely everyone is aware of the danger of the consequences of this case for a Member State and for other States which are considering becoming Members of the 1992 Fund. Indeed, these facts speak for themselves and show the poor image of the Fund in Spain.

1.4 The Spanish administration believes that it really makes sense that States do not have to allocate extra money in their budgets for claimants. In the *Aegean Sea* case, on 15 January 1993 and on 25 March 1994, the Spanish Government approved urgent measures setting up – through a national banking institution – a loan to the Spanish claimants of Pts 1 000 million. Most recently, on 30 May 1997 a new loan of Pts 12 500 million has been granted to the Spanish claimants. The Spanish administration considers that this decision had to be adopted because of the breach by the 1971 Fund of the principle that "compensation must be prompt and fair if it is to be meaningful". In the view of the Spanish administration, there is enough evidence on the table to make better assessments and to justify new partial payments.

1.5 In this document, the Spanish administration – in the context of the latest decision taken by the Spanish government – draws the Committee's attention to the fact that the operation of the Fund has not so far met the expectations of either the Spanish claimants or of the Spanish administration, and insists on the absolute need for further negotiations between the Fund and the claimants to try to unblock the situation, with the aim of seeking a "way out" and out-of-court settlements for the main groups of claims. In the Spanish view, the interventions of the Fund in the Spanish courts have brought the negotiations to a standstill and have prevented further new payments, thus very seriously affecting the image and credibility of the Fund in Spain.

2 Agreement of the Council of Ministers of the Spanish government to authorize to the "Instituto de Crédito Oficial" the setting up of a credit facility of Pts 10 000 million for aquaculture companies and of Pts 2 500 million for shellfish harvesters and fishermen

2.1 The terms of this agreement are as follows:

- (a) The "Instituto de Crédito Oficial", as the financial agency of the Spanish State, will make arrangements with one or several financial institutions in Galicia who would provide loans of up to Pts 12 500 million (£52 million). This figure can be increased by the Department of Economy of the Spanish Government.
- (b) Beneficiaries: aquaculture companies and "Cofradías" which suffered losses arising out of the *Aegean Sea* incident. The "Subdelegación del Gobierno en La Coruña" will establish the amount to be granted to each company and to each "Cofradía".
- (c) Security: the Spanish claimants' right to compensation against the 1971 Fund or against other public or private bodies.

2.2 The Spanish administration still considers that the Funds's experts have dealt with the *Aegean Sea* incident in a biased manner and, as the Spanish delegation stated at the 3rd extraordinary session of the Assembly of the 1971 Fund, looks forward to seeing the conclusions of the future study on the Secretariat working methods to be carried out by a consultant, which should also include the present system of handling claims (including the use of experts in claims and the procedure for the selection of experts and for the assessment of its work). Spain hopes that other Member States will share its view that methods for improving the assessment and payment of claims deserve to be examined further.

2.3 Finally, it should be noted by the Executive Committee that the agreement of the Council of Ministers of the Spanish Government, signed on 30 May 1997, is a new attempt to alleviate as far as possible the burden imposed upon more than 3 000 families who are still waiting for fair compensation at this late stage.

3 **Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
 - (b) to give the Director instructions to continue the negotiations with the Spanish claimants in a very active manner and to make better assessments and further payments before the final decision in Court in respect of the claims arising out of the *Aegean Sea* incident which are still in dispute. To this end, the Spanish administration looks forward to working together with the Fund and the Spanish claimants for the purpose of arriving at a solution acceptable to all in the months to come.
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