



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
55th session  
Agenda item 3

71FUND/EXC.55/7/Add.1  
17 October 1997

Original: ENGLISH

## INCIDENTS INVOLVING THE 1971 FUND

### SEA EMPRESS

Note by the Director

#### 1 Introduction

1.1 This document deals with the level of payment of claims arising from the *Sea Empress* incident.

1.2 As regards the Executive Committee's consideration of this issue at previous sessions, reference is made to paragraphs 5.1.1–5.1.5 of document 71FUND/EXC.55/7.

#### 2 Level of payment of claims

*Information provided by Cristal Ltd*

2.1 Since the cargo carried by the *Sea Empress* was owned by a party to CRISTAL (Contract Regarding a Supplement to Tanker Liability for Oil Pollution, CRISTAL Contract), supplementary compensation may be available from Cristal Ltd to claimants who have not received full compensation under the 1969 Civil Liability Convention and the 1992 Fund Convention.

2.2 Cristal Ltd has provided the following information as to the possibilities for victims of the *Sea Empress* incident to obtain compensation under the CRISTAL Contract.

Parties to the CRISTAL Contract are mainly various oil companies. The compensation system under the Contract is administered by Cristal Ltd.

The cargo on board the *Sea Empress* was owned by a party to the CRISTAL Contract. As a result, Cristal Ltd could be called upon to pay compensation to victims of oil pollution damage resulting from the incident who have not been fully compensated from other sources.

The total amount available under the CRISTAL Contract in respect of the *Sea Empress* incident is 79 176 112 SDR (£67 million)<sup><1></sup>. From this amount is deducted the amount due under the Supplement to the Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution (TOVALOP Supplement), in the *Sea Empress* case 33 389 520 SDR (£28 million), which includes the amount payable by the shipowner under the 1969 Civil Liability Convention. The limitation amount applicable to the ship under the 1969 Civil Liability Convention, 8 825 686 SDR (£7.4 million), is paid by the shipowner to the claimants. The balance between that amount and the amount due under the TOVALOP Supplement is paid by the shipowner to Cristal Ltd to repay (in part) the contributions which parties to the CRISTAL Contract have paid to the 1971 Fund.

After deduction of the amount payable by the shipowner under the TOVALOP Supplement (33 389 520 SDR or £28 million), there remains an amount of 45 786 592 SDR corresponding to £38 743 917. This amount is available for distribution on an equal basis to those claimants who have not been fully compensated under the 1969 Civil Liability Convention and the 1971 Fund Convention and to the parties to the CRISTAL Contract as a reimbursement of their contributions to the 1971 Fund. If the amount available is insufficient to meet the claims of these two groups in full, the claims in both groups are reduced pro rata. Consequently there would be at least 19 176 142 SDR or £16 226 559 available from CRISTAL for payment by Cristal Ltd of unsatisfied third party claims.

Cristal Ltd is a payer of last resort. All claimants must therefore pursue their claims against other persons who are under an obligation to pay compensation, ie against the shipowner/Skuld Club and the 1971 Fund. Cristal Ltd will not make payments until after the 1971 Fund has informed Cristal Ltd that final settlements have been concluded in respect of all claims arising out of the *Sea Empress* incident or until final judgements have been rendered by the competent courts in respect of all contested claims. The reason for this requirement is that Cristal Ltd must know firstly how much has been paid by the parties to the CRISTAL Contract as contributions to the 1971 Fund, and secondly the total amount of the unpaid claims.

Under the CRISTAL Contract, Cristal Ltd is the sole judge of the validity of any claim for compensation, on the basis of the terms and conditions of the Contract. Payment of interest and costs is also at the discretion of Cristal Ltd.

The 1971 Fund would not be entitled to present subrogated claims to Cristal Ltd in respect of claims which it had paid.

### 2.3 Notification of claims to Cristal Ltd

2.3.1 Cristal Ltd has received notification from eight fishermen who have presented claims for compensation against the Skuld Club and the 1971 Fund for a total £531 144. These claimants have received compensation from the Skuld Club and the 1971 Fund for £399 354. So far Cristal Ltd has not been notified of any other claims.

2.3.2 The United Kingdom Government has informed the Director that it will notify Cristal Ltd of a claim for some £10-£11 million.

### 2.4 Consideration by the Director

2.4.1 The Director presents the following estimate of the total amount of the claims arising from this incident:

The cost of the clean-up operations is estimated at £25 million out of which some £10-£11 million relate to the claim by the United Kingdom Government (Department of Transport, Welsh Office and MPCU). Fishery claims have been approved for £5.5 million. Pending or

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<1> £1 = SDR 1.181775 as at 15 October 1997.

rejected fishery claims amount to £7 million, and further claims in the fishery sector may be submitted. The fishery claims could therefore total £15 million, if rejected claims were upheld by the courts. With regard to the tourism sector, claims have been approved for £1 265 500, and claims for £1 100 100 are being examined. It is estimated that the tourism claims will not exceed £4 million. Property claims have been approved for a total of £277 000, and it is unlikely that there will be further claims for significant amounts in this category. It is not known whether a claim for costs relating to the salvage of the *Sea Empress* and her cargo will be presented and, if so, in what amount. There might be certain payments in respect of interest which, if final settlements are delayed, could be for significant amounts. There might also be payments in respect of fees of advisers and experts engaged by the claimants, but it is not possible to give an estimate of the total amounts of such payments.

These estimates lead to a total amount of approximately £45 million, plus a possible salvage claim, interest and advisers' fees.

2.4.2 In a note submitted to the Executive Committee (document 71FUND/EXC.55/7/1) the United Kingdom delegation has estimated the total amount of the claims at between £33 million and £42 million.

2.4.3 The United Kingdom delegation has at previous sessions of the Executive Committee stated that the Government would, whilst not waiving its claim against the 1971 Fund, the shipowner and the Skuld Club, stand last in the queue.

2.4.4 At the Executive Committee's 54th session the observer delegation of Cristal Ltd confirmed that Cristal Ltd was prepared to acknowledge a notification made by the United Kingdom Government of its claim before the expiry of the two-year period as valid for the purpose of preventing its claim from becoming time-barred under the CRISTAL Contract up to the amount so notified. The delegation stated that Cristal Ltd would not invoke against the Government's claim the fact that, by standing last in the queue as regards the shipowner, the Skuld Club and the 1971 Fund, the Government would not be able to receive from the Fund/Club the amount to which it would have been entitled, had they competed in a normal way with other claimants. The delegation also stated that Cristal Ltd would, if so requested, confirm its position on the latter point in writing to the United Kingdom Government<sup>2</sup>. The Cristal Ltd delegation added that the Board of Cristal Ltd endeavoured to apply the 1971 Fund's criteria for the admissibility of claims.

2.4.5 It cannot be ruled out that new claims might be submitted to the 1971 Fund after the expiry of the two year time bar period laid down in the CRISTAL Contract. There is no guarantee that all claimants who had presented claims to the 1971 Fund within that period would in fact notify Cristal Ltd of their claims. No payments will be made by Cristal Ltd until final settlements have been reached or final judgements have been rendered in respect of all claims. This means that, should some claims be subject to court proceedings, it might take many years before Cristal Ltd would make any payments. Under the Rules of the CRISTAL Contract, the payment of interest is at the discretion of Cristal Ltd. Cristal Ltd could reject a claim of which it had been properly notified on the ground that it was not admissible for compensation under the CRISTAL Contract. Cristal Ltd has, however, in a letter to the Director stated that the Board of Cristal Ltd usually uses the same criteria as the 1971 Fund for determining the admissibility of claims.

2.4.6 In spite of the limitations set out in paragraph 2.4.5 in respect of the cover under the CRISTAL Contract, the Director considers, nevertheless, that the amount available under the CRISTAL Contract in respect of the United Kingdom Government's claim would constitute sufficient security against overpayment by the 1971 Fund. For this reason, he proposes that the Executive Committee should authorise him to increase the 1971 Fund's payments to 100% of the damage actually suffered by the claimant as assessed by the experts engaged by the 1971 Fund and the Skuld Club, on condition that the United Kingdom Government has submitted its claim to the Fund and has notified Cristal Ltd of the claim, and that Cristal Ltd has confirmed its acceptance of the Government's notification.

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<sup>2</sup> Cristal Ltd has subsequently confirmed in writing its position on this point.

**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; and
  - (b) to take a decision on the level of the 1971 Fund's payment (paragraph 2.9 above).
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