



## REVIEW OF THE INTERNATIONAL COMPENSATION REGIME

### NUMERICAL ELABORATION ON THE PROPOSAL THAT TANK STORAGE COMPANIES MAY DISCLOSE THEIR PRINCIPALS THUS AVOIDING THE RISK THAT ADVANCED LEVY PAYMENTS WOULD NOT BE COMPENSATED

**Submitted by the Federation of European Tank Storage Companies**

<b>Summary:</b>	This document contains an arithmetical analysis of the potential effects on contributions to the 1992 Fund if oil storage companies were allowed to disclose the identities of their principals.
<b>Action to be taken:</b>	Information to be noted.
<b>Related documents:</b>	92FUND/WGR.3/5 and 92FUND/WGR.3/19/16.

### **1 Introduction**

- 1.1 Earlier debates on this issue in the Working Group, notably at the meeting held in May 2004 showed that delegates needed a better insight into what the consequences for the Fund would be if tank storage companies were allowed to disclose the identities of their principals. FETSA understands these concerns. A tank storage terminal is by its nature an accumulator of oil volumes for larger and smaller customers (principals) and thus soon qualifies as a contributor to the Fund by exceeding the threshold volume of 150 000 tonnes of contributing oil per year. The concern addressed in this document is whether disclosure of the identities of principals would endanger the financial viability of the Fund. Tank storage companies are providers of logistic services to the chain of the oil trade but are involved neither in the trading of oil nor responsible for their carriage at sea. This is precisely the meaning of the notion of independence of such companies. In view of this, the fundamental question that remains and may yet remain unanswered is whether placing the financial burden on these companies is justifiable. FETSA considers that there is an undue lack of balance, which the Fund will need to address sooner or later.
- 1.2 The above-mentioned concern can only be addressed by an analysis of data, which would involve the copying and collating of commercial data from competing tank storage companies as well as their principals. The total volume received by all parties (independent terminal or a principal) would need to be measured against the threshold volume of 150 000 tonnes of contributing oil in any one calendar year. Any party whose volume received exceeded this threshold volume would

be a potential contributor to the Fund. Leaving aside principals outside Contracting States, the total volumes received by all independent terminals should be compared with the total volumes for principals. The result would show the effect of disclosure of the identities of principals in Contracting States. Although the arithmetic is quite straightforward, it would be impossible to achieve, since the data needed are not for both legal and commercial reasons. National and international competition law may penalize the sharing of commercial data and no company would want such an exposure to competitors. Nevertheless, FETSA was given the opportunity to have a look on the inside of several terminals belonging to a larger conglomerate and undertake an arithmetic analysis. Through averaging data over time and scaling the data in relation to the 150 000 tonnes per annum threshold, a sample overview could be obtained from four large and one smaller terminals and a variety of nine principals ranging from large to medium sized. As has been stated by FETSA at previous meetings of the Working Group, small traders disappeared from the marketplace decades ago. The result of this arithmetical analysis is shown in the matrix attached at the Annex.

## **2 What does it show?**

- (a) A sample throughput volume of contributing oil of 33.09 times the threshold value of 150 000 tonnes per annum achieved through independent terminals.
- (b) It is not known what the principals' turnover through their own terminal facilities are, but these volumes are likely to be much greater than those through the independent terminals.
- (c) Terminals are clearly accumulators of throughput volume.
- (d) On the basis of the existing non-disclosure approach, about one percent of the volume of contributing oil slips below the threshold value (see the column total of Terminals vs Terminals pay). If the identities of principals were disclosed, the volume of contributing oil slipping below the threshold value would fall to about 0.5 per cent (see row total of Principals vs Principals pay) (cf document 92FUND/WGR.3/19/5).

## **3 What can and cannot be concluded?**

- (a) Access to the above commercial data cannot be extended any further unless governments demand such data against all principles of competition law.
- (b) The Fund's aim is to compensate victims who suffer admissible pollution damage caused by oil. The issue is therefore not about the amount of the compensation itself but about the way the financial burden is distributed among those who are required to pay contributions to the Fund. In the above example four terminals (T1, T2, T3 and T4) would each be paying considerably more than any principal would, if disclosed, and those terminals would each have to compensate for a one percent shortfall from terminal T5. If disclosed, the burden on individual principals would be considerably lighter. Moreover, they would need to compensate for a shortfall of only 0.5 percent because of principal P9.
- (c) It cannot be proven that this sample exercise is representative for the entire Fund at any time.

## **4 Final considerations**

FETSA feels that the current system of contributing to the Fund is unreasonably hard on its member. Tank storage companies have no other involvement than being a supplier of storage services and no influence on the carriage of oil by sea. Yet, if an incident occurs in another corner of the world the invoices will be handed out to them. Despite commercial attempts, among others by putting up defences through general terms and conditions, it has proven to be difficult to obtain reimbursement from principals long after contributions have been paid by the terminals,

sometimes posing a threat to a terminal's economic viability. The difficulty arises from the fact that there is a customer-supplier relationship between principal and terminal, and market conditions give the customer the upper hand, causing the terminal eventually to give in. The difference with direct invoicing of contributions to principals would be that the Fund as an official Authority is hard to ignore. Although the situation as regards principals outside Contracting States would remain unchanged, the introduction of a disclosure principle like the one foreseen in the HNS Fund would bring some relief. Moreover, disclosure would shift the financial burden to those who have an interest in the margins on the value of oil, which are obviously much greater than the margins that can be obtained from oil storage services. From the sample exercise it may be judged that a shift to disclosure, whilst unlikely to lead to unreasonable burdening of others would ensure that the contribution system remained intact. Moreover, disclosure would only move the burden of payment directly and precisely to those who should pay anyway, but are all too often unsuccessfully addressed by the tank storage companies. Finally, the sample exercise should give some encouragement to the soon to be operational HNS Fund, that includes a disclosure paragraph regarding the definition of receiver.

**5 Action to be taken by the Working Group**

The Working Group is invited to take note of the information contained in this document.

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ANNEX

<b>IOPC Model for counting contributing Oil</b>				<b>Averaged over 2001 - 2004 scaled on the threshold value of 150.000 tpa</b>									<b>total of Terminals</b>	<b>Terminals pay</b>
<b>Principals</b>	P1	P2	P3	P4	P5	P6	P6	P7	P8	P9				
total of own terminals	?	?	?	?	?	?		?	?	?				
<b>indep. Terminals</b>														
T1	0.23	0.32	1.86	0.18	0.65	1.39	0.66	1.21	0.56			7.06	7.06	
T2	1.40	1.07	1.17	0.37	0.19	1.89						6.09	6.09	
T3	1.53	0.16		2.62	1.20	0.01	0.87	1.16	0.97	0.05		8.59	8.59	
T4	2.44	0.32	3.40	1.81	0.60	0.05	1.10	1.11	0.12	0.12		11.06	11.06	
T5					0.11		0.07		0.12			<b>0.30</b>	<b>0.00</b>	
T6												0.00		
Tj etc												0.00		
Tm												0.00		
<b>total of Principals</b>	<b>5.58</b>	<b>1.88</b>	<b>6.43</b>	<b>4.98</b>	<b>2.75</b>	<b>3.34</b>	<b>2.69</b>	<b>3.48</b>	<b>1.77</b>	<b>0.16</b>		<b>33.09</b>	<b>32.80</b>	
<b>Principals pay:</b>	<b>5.58</b>	<b>1.88</b>	<b>6.43</b>	<b>4.98</b>	<b>2.75</b>	<b>3.34</b>	<b>2.69</b>	<b>3.48</b>	<b>1.77</b>	<b>0</b>		<b>32.92</b>		

**FETSA February 2005**  
**Data anonymised**