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DENIAL OF COMPENSATION DUE TO NON-SUBMISSION OF OIL REPORTS

Note by the Director of the International Oil Pollution Compensation Funds 1971 and 1992

Summary:

The Supplementary Fund Protocol contains provisions under which compensation will be denied temporarily or permanently in respect of States that do not comply with their obligations to submit oil reports. This document considers the circumstances under which a State should be considered as having failed to comply with its obligation in this regard and sets out the Director's proposals for the procedures to be followed when he becomes aware of an incident that might give rise to compensation payments by the Supplementary Fund.

Action to be taken:

To decide:

- (a) on the circumstances under which a State shall be considered as having failed to comply with its obligation to submit oil reports under the Supplementary Fund Protocol;
- (b) on the procedure to be followed in the event of a State having failed, or is believed to have failed, to comply with its obligation; and
- (c) on the appropriate provisions to be inserted in the Internal Regulations on this matter.

1 Introduction

- 1.1 The non-submission of reports on contributing oil receipts (oil reports) has been a recurring problem for both the 1971 Fund and the 1992 Fund. When the Supplementary Fund Protocol was developed, it was therefore decided to insert provisions under which compensation would be denied temporarily or permanently in respect of States that have failed to fulfil their obligation to submit oil reports.
- 1.2 Articles 15.2 and 15.3 of the Supplementary Fund Protocol deal with the issue of denial of compensation. These Articles are set out in Annex I of this document. When the third

intersessional Working Group was considering drafts of these Articles, it was suggested that the provisions should be clarified as to what constituted a failure to fulfil the reporting obligation, ie a total failure to submit oil reports or also minor deficiencies in relation to reporting (document 92FUND/WGR.3/9 and 92FUND/A.6/4, paragraph 7.2.29). Article 15.2 provides that this clarification is to be made in the Internal Regulations of the Supplementary Fund. The Supplementary Fund Assembly will therefore have to determine in advance the circumstances when compensation should be denied under Articles 15.2 and 15.3 and insert the appropriate provisions in the Internal Regulations.

- 1.3 Although the Supplementary Fund would not normally be required to make compensation payments until some considerable time after an incident occurred, there would be some urgency in establishing whether the Supplementary Fund intended to deny compensation, since if this were the case, the 1992 Fund would not be able to compensate claimants in full and would need to pro-rate payments of compensation accordingly.
- 1.4 This document sets out the Director's considerations on this issue.

2 Obligations of a State to submit oil reports

- 2.1 The obligation to submit oil reports to the Supplementary Fund is governed by Articles 13.1 and 15.1 of the Supplementary Fund Protocol and Articles 15.1 and 15.2 of the 1992 Fund Convention. These Articles are set out in Annex II to this document.
- 2.2 As regards the 1992 Fund, the procedure for submitting oil reports is amplified in its Internal Regulation 4, which is reproduced in Annex III. According to 1992 Fund Internal Regulation 4.1 reports on contributing oil receipts shall reach the Director not later than 30 April each year. Internal Regulation 4.4 contains a provision that corresponds to that of Article 15.1 of the Supplementary Fund Protocol, which obliges States where there is no person liable to pay contributions to inform the Director accordingly.

3 Circumstances under which a State shall be considered as having failed to comply with its obligations to submit oil reports under the Supplementary Fund Protocol

- 3.1 A State shall, in the Director's view, be considered to be in breach of its obligation for a given year if the Director has neither been notified by that State that no person is liable to contribute to the Supplementary Fund in respect of that State nor has received any oil reports for that year.
- 3.2 A State shall also, in the Director's view, be considered to be in breach of its obligation for a given year if the oil reports for that State are incomplete.
- 3.3 An important issue is whether formal deficiencies in one or more reports should result in a State being considered to be in breach of its obligation. An example of such a deficiency would be if one or more oil reports have not been signed by an officer of the company or other person being reported on (unless the State has declared that it assumes itself the obligation of any company or person liable to pay contributions) and have not been signed by the responsible official of the Government or competent Government authority to indicate that the Government is satisfied that the information contained therein is correct and complete.

4 Procedure to be followed

The Director suggests that the following procedure should be used:

- In addition to the normal procedures for checking whether States have submitted their oil reports, when the Director becomes aware that an incident might give rise to payments of

compensation by the Supplementary Fund, he will promptly assess the situation as regards the affected State's oil reports for all years preceding the year of the incident.

- If the State has not, in the Director's view, fulfilled its obligation to submit oil reports or if there is in the Director's view, uncertainty as to whether its obligation has been complied with, he will notify the State in writing inviting the State to take the necessary steps to resolve the issues set out in the notification.
- If the situation has not been resolved to the Director's satisfaction within a period of three months from the notification referred to above, he will write to that State accordingly and will refer the matter to the Assembly for its consideration at a session to be held within three months of the date of this letter.
- At that session the Assembly will decide whether or not the State has fulfilled its obligation to submit reports, taking into account any extenuating circumstances that may have prevented their submission. The Director will notify the State in writing of the Assembly's decision, drawing the State's attention to the provision of Article 15.3 of the Supplementary Fund Protocol, under which compensation will be permanently denied if the State has not complied with its obligations to submit oil reports within one year of this notification.
- If, nine months after the date of the Director's above-mentioned notification of the Assembly's decision, the State has still not fulfilled its obligation to submit reports, the Director will remind the State in writing of the need to fulfil these obligations in order to avoid compensation being permanently denied after the one-year period has expired.
- The Director will keep the Executive Committee of the 1992 Fund informed of the steps taken as set out above, so as to enable the Committee to take the situation into account for the purpose of deciding whether the 1992 Fund should pro-rate compensation payments in the event that the Supplementary Fund were to decide to deny compensation.

5 Action to be taken by the Assembly

The Assembly is invited:

- (a) to decide on the circumstances under which a State shall be considered as having failed to comply with its obligation to submit oil reports under the Supplementary Fund Protocol;
- (b) to decide on the procedure to be followed in the event of a State having failed to comply with its obligation or where there is, in the Director's view, uncertainty as to whether its obligation has been complied with; and
- (c) to give the Director such instructions as it may deem appropriate as regards the provisions to be inserted in the Internal Regulations on this matter.

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ANNEX I

Article 15, paragraphs 2 and 3 of the Supplementary Fund Protocol

- 15.2 No compensation shall be paid by the Supplementary Fund for pollution damage in the territory, territorial sea or exclusive economic zone or area determined in accordance with article 3(a)(ii), of this Protocol, of a Contracting State in respect of a given incident or for preventive measures, wherever taken, to prevent or minimize such damage, until the obligations to communicate to the Director of the Supplementary Fund according to article 13, paragraph 1 and paragraph 1 of this article have been complied with in respect of that Contracting State for all years prior to the occurrence of that incident. The Assembly shall determine in the Internal Regulations the circumstances under which a Contracting State shall be considered as having failed to comply with its obligations.
- 15.3 Where compensation has been denied temporarily in accordance with paragraph 2, compensation shall be denied permanently in respect of that incident if the obligations to communicate to the Director of the Supplementary Fund under article 13, paragraph 1 and paragraph 1 of this article, have not been complied with within one year after the Director of the Supplementary Fund has notified the Contracting State of its failure to report.

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ANNEX II

Article 13, paragraph 1 and Article 15, paragraph 1 of the Supplementary Fund Protocol

- 13.1 Contracting States shall communicate to the Director of the Supplementary Fund information on oil receipts in accordance with article 15 of the 1992 Fund Convention provided, however, that communications made to the Director of the 1992 Fund under article 15, paragraph 2, of the 1992 Fund Convention shall be deemed to have been made also under this Protocol.
- 15.1 If in a Contracting State there is no person meeting the conditions of article 10, that Contracting State shall for the purposes of this Protocol inform the Director of the Supplementary Fund thereof.

Article 15, paragraphs 1 and 2 of the 1992 Fund Convention

- 15.1 Each Contracting State shall ensure that any person who receives contributing oil within its territory in such quantities that he is liable to contribute to the Fund appears on a list to be established and kept up to date by the Director in accordance with the subsequent provisions of this Article.
- 15.2 For the purposes set out in paragraph 1, each Contracting State shall communicate, at a time and in the manner to be prescribed in the Internal Regulations, to the Director the name and address of any person who in respect of that State is liable to contribute to the Fund pursuant to Article 10, as well as data on the relevant quantities of contributing oil received by any such person during the preceding calendar year.

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ANNEX III

Internal Regulation 4 of the 1992 Fund

<u>Regulation 4</u>	
<i>Reports on Contributing Oil Receipts</i>	
4.1	Each Member State shall forward annually to the Director reports on contributing oil receipts, using the form annexed to these Internal Regulations. The reports shall reach the Director not later than 30 April each year. They shall specify the names and addresses of all persons who, in the preceding calendar year, received within the territory of the Member State concerned oil in respect of which contributions are liable to be paid in accordance with Article 10 of the 1992 Fund Convention, together with details of the quantities of contributing oil received by all such persons during that year.
4.2	The reports shall be completed by the contributors concerned, taking into account the explanatory notes attached to the form referred to in Internal Regulation 4.1. The reports shall be signed by a competent officer of the entity which received the oil and by a Government official.
4.3	Each State in respect of which the Convention enters into force after 30 April of any year shall, on or before the date of entry into force of the 1992 Fund Convention for that State, submit a report in the terms stipulated in this Internal Regulation in respect of contributing oil received within its territory during the preceding calendar year.
4.4	If no person in a Member State has received contributing oil in sufficient quantities for a report to be submitted, the State shall notify the Director accordingly.
4.5	The Director shall, not later than 15 January of each year, invite Member States to submit the reports referred to in Internal Regulation 4.1. He shall send these States an appropriate number of the forms mentioned in that Regulation.
4.6	The Director shall provide Member States with a list of the States in respect of which the 1992 Fund Convention was in force on 1 January of that year, with a indication of the date on which the 1992 Fund Convention entered into force for any State during the course of the previous year. The Director shall also notify Member States of the date on which the 1992 Fund Convention ceased to be in force for any State during the course of that year.
4.7	The Director shall ascertain whether, as a result of the coming into force of the 1992 Fund Convention for a State during the course of any given year, some quantities of contributing oil have been reported to the 1992 Fund under Internal Regulation 4.1 by more than one State. Where any such double reporting is found, the Director shall amend the reports submitted by the Member States concerned accordingly and inform these States.
4.8	Where amendments are made to the quantities of contributing oil reported in accordance with Internal Regulation 4.1, whether or not as a consequence of action on the part of the Director under Internal Regulation 4.7, the Director shall recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 12 of the 1992 Fund Convention utilising the amended quantities. If invoices have already been sent to the contributors concerned, corrected invoices shall be issued. Where the contributions have been paid on the basis of the original invoices, any differences between the contributions paid or invoiced and the recalculated contributions shall be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised. If no contributions are due from that person in the following year, the Director shall inform the contributor of his right to reimbursement of the balance on his account.
4.9	Where, pursuant to Article 14 of the 1992 Fund Convention, a Member State assumes itself the obligations of any person who is liable to contribute to the 1992 Fund in respect of oil received within the territory of that State, such a State shall, when submitting its reports on contributing oil received, specify therein the names and addresses of the persons in respect of which the State assumes such obligation and the quantities of contributing oil received by such persons.