



ASSEMBLY  
10th session  
Agenda item 15

92FUND/A.10/14/1  
12 September 2005  
Original: ENGLISH

ASSEMBLY  
1st extraordinary session  
Agenda item 9

SUPPFUND/A/ES.1/8/1

ADMINISTRATIVE COUNCIL  
17th session  
Agenda item 11

71FUND/AC.17/9/1

## SUBMISSION OF OIL REPORTS

### REVIEW OF PROCEDURES

#### Note by the Director

<b>Summary:</b>	The non-submission of oil reports has been a constant problem. The normal procedures for monitoring the submission of oil reports are reviewed. Recommendations are made as to further measures that might encourage States to fulfil their obligations to submit these reports.
<b>Action to be taken:</b>	Consider what further measures might contribute to an improvement of the situation.

### 1 Introduction

- 1.1 The non-submission of oil reports has been a constant problem over the years for the 1971 Fund and the 1992 Fund. The current situation is set out in documents 92FUND/A.10/14, SUPPFUND/A/ES.1/8 and 71FUND/AC.17/9.
- 1.2 At its first session in March 2005, the Supplementary Fund Assembly considered how the provisions on denial of compensation due to non-submission of oil reports that are contained in Articles 15.2 and 15.3 of the Supplementary Fund Protocol should be implemented (document SUPPFUND/A.1/39, paragraphs 20.1-20.9). During the discussion of this matter, several delegations indicated that, in addition to its normal procedures, the Secretariat should take a proactive approach towards encouraging States to fulfil their obligations to submit oil reports. One delegation suggested that States which did not fulfil their obligations should be 'named and shamed', for example on the IOPC Funds' website or in the Annual Report.
- 1.3 The Assembly instructed the Secretariat to consider its normal procedures for monitoring the submission of oil reports and to make recommendations to the next session of the Assembly as to what further measures could be taken to encourage States to fulfil their obligations in this regard. Delegations were also invited to submit proposals (document SUPPFUND/A.1/39, paragraph 20.9).

- 1.4 The Secretariat's normal procedures for monitoring the submission of oil reports are set out in this document which also contains proposals as to what further measures might encourage States to fulfil their obligations in this regard.
- 1.5 It should be noted that it is important to distinguish between non-submission of reports by States and non-payment of contributions by contributors. The non-submission of reports is in principle a major problem, although in practice the financial implications are limited, since it is likely that most States that do not submit reports have few if any contributors, and where there are any contributors in these States it is likely that they only receive relatively small quantities of contributing oil. In contrast there are relatively few contributors who do not pay invoiced amounts, although the amounts can in some cases be quite significant.

## **2 Procedure for obtaining oil reports**

- 2.1 The annual procedure for obtaining oil reports is as follows:

15 January	The Secretariat writes to all Member States requesting oil reports for previous year (plus any outstanding reports).
30 April	Deadline for submission of reports. The majority of States do not meet this deadline. By April 2005, only 33 of the 92 States requested to submit reports to the 1992 Fund for contributing oil received in 2004 had submitted their reports.
June	When a significant number of the reports have been received, the Secretariat writes to all States with outstanding oil reports to remind them of their obligations.
August	The Secretariat writes again to all States with outstanding oil reports.
September	The Secretariat issues a document to the governing bodies on the non-submission of reports, which includes a table of States with outstanding reports.
October	The issue of non-submission of oil reports is discussed at the sessions of the governing bodies.

- 2.2 In addition, the issue of non-submission of oil reports is raised with representatives of Member States whenever possible, eg during meetings of the governing bodies and when the Director or other staff members participate in Conferences, Seminars and Workshops or visit States which have not fulfilled their obligations in this regard.

## **3 The position of the governing bodies**

- 3.1 The issue of non-submission of oil reports has been considered by the governing bodies of the 1971 Fund and the 1992 Fund every year at their October sessions on the basis of a document submitted by the Director.
- 3.2 At their October 2002 sessions, the governing bodies of the 1992 and 1971 Funds recognised that it was their responsibility to find creative solutions to the problem within the constraints of the 1992 and 1971 Fund Conventions and then to support the Secretariat in the implementation of these solutions.
- 3.3 The issue was considered by the governing bodies most recently in October 2004. The Record of Decisions of the 1992 Fund Assembly's October 2004 session reflects the discussion as follows (document 92FUND/A.9/31, paragraphs 14.3-14.8):

Many delegations expressed their very serious concerns as regards the number of Member States which still had failed to submit oil reports since the submission of these reports was crucial to the functioning of the IOPC Funds. It was emphasised that the non-submission of oil reports was a violation of States' treaty obligations

under the 1992 and 1971 Fund Conventions. It was suggested that States that did not fulfil their duties had no rights.

The Assembly noted that the failure of a number of Member States to submit oil reports had been a very serious issue for a number of years and that, whilst the situation might be slightly better than in previous years, it was still very unsatisfactory.

Several delegations stated that they strongly supported any sanctions that could be imposed on States which did not submit reports. The Director drew attention to the fact that the issue of sanctions had been considered by the Assembly on several occasions and that the Assembly had concluded that the present text of the 1992 Fund Convention did not make it possible to impose any sanctions against States (other than the one provided for in Article 15.4).

The Assembly instructed the Director to pursue his efforts to obtain the outstanding oil reports and urged all delegations to co-operate with the Secretariat in order to ensure that States fulfilled their obligations in this regard.

It was noted that a real solution for the future could only come from a revision of the 1992 Conventions being considered by the intersessional Working Group. The Chairman invited all delegations to develop their ideas on this topic and to present them in the form of concrete proposals to the meeting of the Working Group scheduled for February 2005<sup><1></sup>.

The Assembly instructed the Director to continue to bring the matter of the non-submission of oil reports to its attention at each regular session.

#### **4 Consideration of sanction mechanisms by the governing bodies**

As mentioned above, the question as to whether sanctions could be imposed on States which do not fulfil their obligations to submit oil reports has been discussed by the governing bodies on several occasions, most extensively in October 1998, as set out in the Annex. The conclusion was that, unless the 1992 Fund Convention were to be amended, the scope for sanctions was practically nil. The only 'sanction' considered legally possible was to take the non-submission of oil reports into account when electing members of the Executive Committee, and the 1992 Fund Resolution N°5 on the Establishment of the Executive Committee contains a provision to this effect. As regards the 1971 Fund, the Administrative Council decided at its October 2003 session that reimbursements from surpluses on Major Claims Funds to contributors in States which had any outstanding oil reports should be postponed until all such reports had been submitted (document 71FUND/AC.12/22, paragraph 17.11).

#### **5 Consideration by the Audit Body**

The issue of the non-submission of oil reports was considered by the Audit Body at its meeting in April 2005. The Audit Body reiterated its great concern that a number of States did not fulfil their treaty obligations to submit oil reports, since without these reports the contribution system could not work in an equitable manner. The Audit Body did not make any concrete proposals in this regard except to recommend that this matter should be dealt with in any review of the Conventions (document 92FUND/A.10/11, SUPPFUND/A/ES.1/6 and 71FUND/AC.17/6, paragraphs 3.10-3.12).

---

<1> No such proposals were presented to the Working Group

## **6 Initiatives that have been taken**

- 6.1 In January 2001, the Secretariat developed a declaration for States to use where there is no entity liable to pay contributions, which is a simpler option for States than completing oil reports.
- 6.2 In January 2002, as instructed by the respective governing bodies, the Chairmen of the 1992 Fund Assembly and 1971 Fund Administrative Council wrote to all States with outstanding oil reports emphasising the governing bodies' concerns, requesting an explanation as to why the reports had not been submitted and explaining the procedure for submission of oil reports, but only three responses to these letters were received.
- 6.3 In January 2004 the letter to Member States requesting oil reports was simplified in order to make it easier for States to understand.
- 6.4 In March 2005, the oil report form (including accompanying notes) was redesigned to make it more user-friendly.

## **7 Factors contributing to the problem**

- 7.1 It appears that a number of factors contribute to the failure of some States to submit oil reports, including the following:
- The January letter requesting the submission of oil reports together with its attachments (ie oil report forms, summary of previous contributors and quantities reported, list of Member States and brochure about the IOPC Funds) is quite bulky, which may give the impression that dealing with it will involve a considerable amount of work.
  - Completing the oil reports actually can involve quite a lot of work, at least the first time a State submits a report. It often takes a couple of years for new Member States to put appropriate procedures in place. However, once a State has begun to submit oil reports, it usually continues to do so.
  - The most common causes of problems arising in respect of Member States which have previously submitted reports appear to be changes in personnel or restructuring of ministries/agencies.
  - Unless the Secretariat is notified otherwise, it relies on the Embassy or High Commission in London to forward the request to the appropriate ministry or agency in that State.
  - Submission of oil reports may require liaison and cooperation between two or more ministries or agencies, e.g.,
    - foreign affairs
    - justice/legal affairs
    - economy
    - industry/energy/petroleum
    - maritime affairs/shipping/transport/communications
    - environment.
  - Many Member States do not attend meetings of the IOPC Funds' governing bodies with the result that:
    - they do not understand the seriousness with which the governing bodies view the problem; and
    - the Secretariat is not able to speak to individual representatives.

- As mentioned above, the governing bodies have found that there are no sanctions which can be taken against States which do not submit oil reports to the 1992 or 1971 Funds, except that the failure to submit reports may be taken into account by the 1992 Fund Assembly when electing Members of the 1992 Fund Executive Committee and that reimbursements of surpluses on Major Claims Funds may be withheld from contributors in States with outstanding oil reports.
- It appears that some States do not understand the link between the submission of oil reports and the subsequent issuing of invoices.
- It seems that some States do not understand that if there is no entity in the State concerned which is liable to pay contributions, they only need to complete a simple declaration.

## **8 What more can be done?**

8.1 Any further measures to encourage States to submit oil reports will have to focus on either:

- assisting States to submit reports; or
- 'shaming' them into doing so.

8.2 As regards assisting States to submit oil reports, measures that could be considered include the following:

- The Secretariat could liaise much more closely with the Embassy or High Commission of new 1992 Fund Member States in order to try to prevent problems from arising in the first place. This could include inviting the Embassy or High Commission to inform the Secretariat of an individual who is to be responsible for the procedure for submission of the oil reports, either at the Embassy or High Commission or at a relevant Ministry or agency.
- All States could be invited to give the Secretariat the contact details of the person, section or agency which in the respective State is responsible for the submission of reports so as to enable the Secretariat to make direct contacts when problems arise.
- The Secretariat is considering establishing an electronic reporting system for the submission of reports on contributing oil, similar to that which has been developed in the context of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention). It is conceivable that the reduced administrative work involved in using such a system compared to the present system might assist those States with relatively small administrations in the submission of reports.
- The Assembly may wish to consider whether when electing Chairman and Vice-Chairmen of various Fund bodies account should be taken of whether the States whose nationals are considered for election have fulfilled their obligations to submit oil reports.
- The Assembly may wish to instruct the Director to invite a few States which have established efficient procedures for compiling the necessary information and submitting the reports to inform the Secretariat of these procedures. The Director could then prepare an information document which could assist other States in setting up such procedures.

- 8.3 As regards 'shaming' States into submitting oil reports, as suggested at the 1992 Fund Assembly's October 2004 session, in addition to highlighting States with outstanding reports on the website and in the Annual Report, the Assembly or Administrative Council could invite those States with outstanding reports which are represented at the sessions of the governing bodies to report back at the next session with an explanation as to the reasons for that State's failure to submit reports.

**9 Conclusions**

- 9.1 In paragraphs 8.2 and 8.3 above the Director has indicated certain steps that might contribute to improving the situation as regards the submission of oil reports.
- 9.2 However, it appears that there are relatively few new measures that could be taken by the Secretariat or the governing bodies to encourage States to fulfil their obligations to submit oil reports and that persistence is the only real option, as the governing bodies have, in despair, noted on several occasions.

**10 Action to be taken by the governing bodies**

The governing bodies are invited:

- (a) to take note of the information contained in this document;
- (b) to consider whether the measures set out in paragraphs 8.2 and 8.3 of this document might contribute to an improvement of the situation as regards the submission of oil reports; and
- (c) to give the Director such other instructions as regards the issues dealt with in this document as it may deem appropriate.

\* \* \*

## ANNEX

### Extract from the Record of Decisions of the 3rd session of the 1992 Fund Assembly, held in October 1998 (document 92FUND/A.3/27)

#### **12 Submission of oil reports: consideration of sanction mechanisms**

- 12.1 It was recalled that the Assembly at its 2nd session had considered the question of whether, in the case of a State which had not submitted its reports on oil receipts during a given year, annual contributions to be based on quantities received during that year could instead be invoiced on the basis of the figures of the latest reports submitted by the State (document 92FUND/A.2/29, paragraph 12.7).
- 12.2 It was also recalled that the Assembly had taken the view that the obligation to pay contributions arose under Article 10 of the 1992 Fund Convention when an entity had received more than 150 000 tonnes in a calendar year and that this obligation existed whether or not the State in question had submitted the relevant oil reports. The Assembly considered that, although the onus lay on the contributor to fulfil this obligation, it could not reasonably be expected that an entity made a payment to the 1992 Fund without having first received an invoice. It was noted that the invoices were calculated on the basis of levies per tonne of contributing oil received and that, in the absence of oil reports being submitted by the State, the question arose as to how to establish the quantities of oil received.
- 12.3 The Director introduced document 92FUND/A.3/10 in which he set out possible ways of determining the quantities of oil received in States which had not submitted their oil reports. He outlined the following possible options:
- (a) Invoices could be based on the figures of the latest report submitted by the State in question for the entity concerned. However, it would not be possible to apply this approach to those States which had not submitted any reports on oil receipts since joining the 1992 Fund. Furthermore, this approach took no account of the annual variations in quantities received.
  - (b) The 1992 Fund could contact contributors directly and invite them to submit the oil reports directly to the Fund, with a copy to the competent authority. However, there would be no legal obligation for the contributors to respond to such a request, the procedure might undermine the reporting system laid down in the 1992 Fund Convention and, furthermore, this procedure did not resolve the problem of those States which had never submitted any reports to the Fund.
  - (c) Indirect contacts could theoretically be made with contributors, but, in his view, such approaches would be inappropriate and the result haphazard.
- 12.4 The Director stated that it would not be practicable to determine the quantities of the receipts of individual contributors on the basis of publicly available statistics on oil receipts, since such statistics would normally relate to aggregate quantities received in particular States and would therefore not provide information on receipts by individual entities.
- 12.5 The Assembly noted the Director's analysis and his view that there was no practicable and viable procedure for levying contributions in the absence of oil reports submitted by States. Nevertheless, the Assembly considered that the non-submission of oil reports was a very important issue which should be kept on the Assembly's agenda, as it represented a matter of serious concern to other Member States and in particular to the contributors in those States.
- 12.6 The Assembly considered whether to adopt a resolution to supplement Resolution N°2 adopted at its 1st session. It was decided, however, that it was unlikely that a new resolution at this stage would resolve the matter.
- 12.7 It was stressed by a number of delegations that the matter in question was one of non-reporting, and that the problem of non-payment of contributions was a separate issue. It was noted that

contributors who did not pay after having been invoiced faced sanctions in the form of the payment of interest.

- 12.8 It was pointed out that Article 15.4 of the 1992 Fund Convention made a Member State which had not submitted its oil reports liable to compensate the 1992 Fund for any financial loss suffered by the Fund as a result thereof. It was noted that this sanction could not be implemented in respect of States which had failed to submit reports, since the loss suffered by the 1992 Fund could not be calculated until the reports had actually been submitted.
- 12.9 A number of delegations stressed the duty of Member States to fulfill their obligations as Parties to the 1992 Fund Convention and reference was made to the principle of *pacta sunt servanda* (treaties are to be kept) contained in Article 26 of the 1969 Vienna Convention on the Law of Treaties. One delegation suggested that the non-submission of oil reports might be a "material breach of a multilateral treaty" as it could be construed as a "violation of a provision essential to the accomplishment of the object or purpose of the treaty" (cf Article 60.3 of the Vienna Convention on the Law of Treaties) and that such non-submission could therefore be invoked as a ground for terminating the treaty or suspending its operation in whole or in part.
- 12.10 It was suggested that a Member State which did not fulfill its obligation to submit oil reports could be invited to denounce the 1992 Fund Convention. It was recognised, however, that a State could not be deprived of its sovereign rights with regard to accession to and denunciation of a treaty.
- 12.11 Some delegations raised the possibility of withholding compensation payments to claimants in States which had not submitted oil reports. Many delegations were of the view, however, that such a course of action could be considered only in respect of claims submitted by a Government or Government authority.
- 12.12 The question was raised whether States which did not submit oil reports should be eligible to the Executive Committee. It was recalled that this issue had been considered by the Assembly at its 2nd session. It was noted that the Assembly had recognised, however, that there might be cases in which States could have valid reasons for having been unable to fulfill their obligations to submit oil reports to the 1992 Fund and that it would therefore be inappropriate to impose automatically the sanction of ineligibility in all cases of the non-submission of reports. It was also recalled that the Assembly had considered that this sanction should be imposed on States only in cases of continued non-fulfilment of the obligation to report. It was recalled that it had been agreed that, in the case of incomplete reports, sanctions should be imposed only if the reports were incomplete in a significant respect (document 92FUND/A.2/29, paragraph 12.4).
- 12.13 The Assembly recalled that the issue referred to in paragraph 12.3 was dealt with in 1992 Fund Resolution N°5 on the Establishment of the Executive Committee. It was noted that paragraph (d) of the Resolution provided that the Assembly might, when electing members of the Committee, take into account the extent to which a particular State had fulfilled its obligation to submit reports on receipts of contributing oil (document 92FUND/A.2/29, Annex I).
- 12.14 It was suggested that a State which did not fulfil its obligation to submit oil reports should not be entitled to vote in the 1992 Fund bodies. It was recalled, however, that this issue had been examined by the Assembly at its 1st extraordinary session on the basis of a study carried out by the Director which concluded that, since the issue was not dealt with in the 1992 Fund Convention, the Assembly would be acting outside the powers invested in it under the Conventions if it were to decide to restrict the voting rights of Member States (document 92FUND/A/ES.1/4, paragraph 3.2.2).

- 12.15 The Assembly decided that, if a State did not submit its oil reports, the Director should make contacts with that State and emphasise the concerns expressed by the Assembly in this regard. The Director was also instructed to inform the competent persons of the States concerned that the Assembly would review individually each State which had not submitted its report and that it would then be for the Assembly to decide on the course of action to be taken for each State.

---