



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

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ASSESSMENT OF THE CLAIM OF A STATE IN CASE OF A DISASTER

Document presented by France, Spain and the United Kingdom

Summary	This document presents the methods used by several States to assess their damage in the case of pollution. It aims at guiding the States which are newly facing an oil spill in the development of their damage claim and presents the proposals to facilitate the exchanges between the affected States and the IOPC Funds.
Action to be taken:	<u>1992 Fund Assembly</u> Decide whether to approve the proposals listed in section 6.

1 Introduction

- 1.1 During the October 2013 sessions of the IOPC Funds' governing bodies, the Member States agreed on the need to develop a guide for affected States to use following the model of those already available for the fishing and tourism industries.
- 1.2 Oil spills are rare disasters therefore it is important for a State newly facing a disaster to rely on the experience of other States in order to build up, in the best possible way, its damage claim.
- 1.3 This document, which successively shows several examples of cost calculation depending on the nature of the expenses, highlights the diversity of the methods used by the States to calculate their damage.
- 1.4 Indeed, each State has its own organisation (federal state, centralised government...), its own budgetary principles and its own laws which derive from its Constitution and its history. This diversity demonstrates the need for the IOPC Funds to adapt to the administrative organisation and budget process of each State when evaluating claims.
- 1.5 Several proposals are also made to facilitate the exchange between the affected States and the IOPC Funds and thus speed up the processing of the compensation claims made by the States.

2 Mobilisation of the State's civil and military officers

2.1 General considerations

- 2.1.1 An oil spill leads to the mobilisation of a large number of people for several months, to perform the operations related to the cleaning and fighting against pollution, both at sea and ashore.

2.1.2 In addition to the volunteers, the people who are mobilised are primarily civil or military officers of the affected State. The rules establishing the remuneration of these officers vary from one State to another, therefore the IOPC Funds' experts must adapt their assessment methods to the specificities of each State.

2.2 Examples of cost calculation for the staff

Cost calculation for the staff in Spain

2.2.1 In Spain, a recently approved decree (Ministry of Development 1634/2013) establishes the cost for the Spanish Maritime Salvage Agency staff. It is a simple tool that permits a quick answer to all the interests involved in pollution response.

2.2.2 Following the said decree there are only three staff categories and the cost is charged by personnel mobilised (from departure to return):

Technical	€56 per day
Diver	€08 per day
Mechanic	€02 per day

2.2.3 To the said figures, fixed daily allowances per person mobilised and fixed transport fares are added.

Cost calculation for the staff in the United Kingdom

2.2.4 Similar to Spain, the UK has only four categories of staff plus volunteer Coastal Rescue Officers, but they are calculated on an hourly basis. The UK scales are:

Director/Strategic	£95.00 per hour
Senior Technical	£60.00 per hour
Technical	£43.00 per hour
Operational	£23.00 per hour

2.2.5 The rates take into account bank holidays, annual leave, privilege leave, training, sick absences, utilisation days, pension, etc. The rates are reviewed on an annual basis.

2.2.6 An additional percentage charge is added for various difficult to calculate costs, such as the use of mobile telephones.

2.2.7 Employees of the Maritime and Coastguard Agency are UK government civil servants, subject to the same rules and terms of employment as main UK Department employees. Staff time is charged for all staff that respond to the threat of, or actual, pollution inside the UK Pollution Control Zone. The justification for this charge is that staff involved in this activity are unable to carry out their normal day-to-day duties during the response time.

Cost calculation for the staff in France

2.2.8 In France, the amount of the salaries of the State's civil and military officers is set very precisely, depending on the rank of the agent and his level, or the employment to which he was appointed. The pay scales are determined by decree.

2.2.9 In the event of pollution, each department which has deployed staff to fight against the pollution draws a chart with the names of the persons who have intervened, their rank, number of days or hours worked, the working cost per hour, the cost of the additional hours. Reports of the operations, which outline the work done by the officers who have been mobilised, are also attached. However, the payslips of the people who have intervened are not communicated because they are private documents which cannot be transferred to third parties without the people's consent.

3 Mobilisation of the air and sea resources belonging to the State

3.1 Cost calculation for equipment in Spain

3.1.1 In Spain, decree of Ministry of Development 1634/2013 establishes the cost for the Spanish Maritime Salvage Agency air and sea resources.

3.1.2 Following the said decree there are the following categories of means and the cost is charged from departure to return:

Helicopter	€8.334 per hour
Plane	€5.876 per hour
Vessel 80 metres length	€2.026 per hour
Vessel 56 metres length	€879 per hour
Rest of tugs	€749 per hour
Lifeboats (15 and 21 metres length)	€350 per hour

3.2 General considerations

3.2.1 The States affected by a pollution incident use the means made available to them to intervene urgently. As few vessels specialising in pollution control are generally available, the use of the Navy may be necessary. The deployment of these vessels results in significant costs for the affected State, which must be compensated. These costs are determined in advance and cannot be negotiated, unlike the intervention of private vessels.

3.2.2 It is also common for an affected State, through bilateral or multilateral agreements^{<1>}, to get the support of the air and sea resources belonging to neighbouring States to fight against pollution. The affected State therefore cannot control the costs of these resources which are determined by another State.

3.2.3 The diversity of the States' practice regarding the fight against pollution and the infrequency of the oil spills justifies that the IOPC Funds adapt themselves to the calculation methods used by the States and not the other way round. Indeed, it is not reasonable to ask those affected States to apply, depending on the type of pollution (IOPC Funds intervention or not), different methods to calculate the cost of the air and sea resources which have been deployed.

3.2.4 Finally, the interventions at sea most often take place in a hurry in order to deal with an unpredictable situation, therefore it is important that the IOPC Funds evaluate the decisions based on data and information tools which were available at the time. The measures which proved to be ineffective but which were deemed necessary by the authorities at the time of the disaster must be compensated.

3.3 Contribution from Norway

3.3.1 In Norway, air resources are bought from a private company and the polluter will be charged the exact hourly costs based on time schedule. Personal costs are added.

3.3.2 In Norway, different sea resources, both private and owned/hired by the State, are involved during incidents with danger of pollution. The costs for the State resources are calculated differently depending on the different resource:

^{<1>} Examples: Bonn Agreement for cooperation in dealing with pollution of the North Sea by oil and other harmful substances; Biscay Agreement between France and Spain.

- (i) Norwegian Coastal Administration gets assistance from the Norwegian Coast Guard. The Norwegian Coast Guard have both owned and hired ships. For owned resources the rate includes staff costs for military and civil staff, food, consumer articles, fuel and maintenance of the ship. For hired ships they also claim for their rent expenditure. Extraordinary costs will be added (overtime, damaged equipment etc). The rental rate is calculated by dividing the costs above by the number of days the ship has been active.
- (ii) For Norwegian Coastal Administration's own ships the rental rate is calculated by dividing expected costs for the next year based on historic data, by the number of days the ship has been active. Costs for fuel and extra staff costs (overtime etc) will be added.

3.4 Cost calculation for the air and sea resources in France

- 3.4.1 In France, given its ability to intervene urgently, the Navy is the first to be mobilised in case of marine pollution. The regulation provides that the intervention of military means for tasks not directly covered by specific missions must be charged.
- 3.4.2 The hourly costs of the aircrafts and vessels as well as the cost per kilometre of the land vehicles belonging to the State are established precisely every year by the Ministry of Defence. The scales distinguish between, for each type of vessel and aircraft, the additional expenses (fuel, maintenance) of the everyday expenditures (paying off, staff).
- 3.4.3 In case of operations aimed at fighting against pollution, the maritime prefecture establishes summary tables detailing the type of means involved, the mission which has been performed, the dates of beginning and end of the mission, the total time spent, the consumption of fuel and the cost of chartering per hour or per day. The reports of the operation are also attached to the claim.

4 Mark-ups

4.1 General considerations

Some costs are difficult to identify specifically, and several countries have chosen to add mark-ups to cover use of the ordinary infrastructure and some other costs.

4.2 Example of calculating mark-ups (including a contribution from Norway)

Mark-up calculation in Norway and UK

- 4.2.1 Norway and the UK add a specific percentage on all personal costs for people in the permanent staff. The mark-up covers phone, fax, stamps, office supplies, coffee, tea, use of NCA/MCA owned cars etc.
- 4.2.2 Norway adds a fixed amount for each temporary personnel. The amount covers all costs for paper work completing the engagement and use of ordinary infrastructure for these employees.

5 The use of private companies

5.1 General considerations

- 5.1.1 When the affected State does not have the technical expertise and material resources required to conduct the operations aimed at fighting against pollution and the coastal clean up, it must refer to private providers to perform these operations.
- 5.1.2 Negotiating favourable rates may be difficult in an emergency situation. It is therefore advised that the States negotiate prices in advance with local businesses or, at least, inquire about the applicable rates.

5.1.3 If the affected State demonstrates, in its claim, that it has negotiated the best rates given the situation, the IOPC Funds shall indemnify it on the basis of the prices it has obtained.

5.2 Example of the framework for intervention of private companies

Framework for intervention of private companies in France

5.2.1 In France, the maritime prefectures and prefecture of the district are recommended to sign public contracts in advance, with one or more providers, to provide services and materials needed to fight against pollution (transport and waste treatment, cleaning and repairing the equipment...), both at sea and ashore.

5.2.2 This solution does not however provide all the guarantees because it is difficult to predict in advance the resources which are needed to deal with a hypothetical pollution incident. If these contracts have not been signed or if they happen to be poorly adapted to the pollution involved, the authorities may use requisition powers.

5.2.3 The invoices relating to the intervention of private providers are added to the claim, along with a summary of the interventions. However, the French government does not have the responsibility to justify the methods used by the companies which have been appointed, as well as the services performed by prospective subcontractors.

6 Action to be taken

6.1 1992 Fund Assembly

The 1992 Fund Assembly is invited to vote on the following proposals which will facilitate the exchanges between the States and the IOPC Funds in case of an oil spill:

- (i) If a disaster occurs, the affected State must inform the IOPC Funds as soon as possible of the methods used to calculate its damage and the types of evidence it intends to submit in support of its claim;
 - (ii) If the IOPC Funds want to obtain more evidence, it must request it from the affected State when the cleaning operations are still underway to allow the State to collect such evidence;
 - (iii) The IOPC Funds must take into account the administrative and budgetary specificities of each State and must not ask an affected State to line up with the practices of other States;
 - (iv) The IOPC Funds must undertake the assessment of the damage of the affected State as soon as possible, even if it puts itself last on the list of beneficiaries for the compensation;
 - (v) The IOPC Funds must use the data and information tools available at the time of the disaster to evaluate the decisions taken by the authorities. The measures which proved to be ineffective but which were deemed necessary by the authorities must be compensated; and
 - (vi) The IOPC Funds must indemnify the States according to the rates they have been able to negotiate with private companies and not according to tariffs which are applied without any emergency.
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