



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS

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1992 Fund Assembly	<b>92A18</b>	•
1992 Fund Executive Committee	<b>92EC59</b>	•
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## ASSESSMENT METHODS OF THE IOPC FUNDS

### Document submitted by France

<b>Summary:</b>	This document concerns the methods used by the IOPC Funds to assess the loss to a State in the event of an incident. Its purpose is the adoption of guidelines by the 1992 Fund Assembly.
<b>Action to be taken:</b>	<p><u>1992 Fund Assembly</u></p> <ul style="list-style-type: none"><li>(a) Note the information contained in this document;</li><li>(b) Examine the proposals formulated in section 2; and</li><li>(c) Request the IOPC Funds' Secretariat to amend the Claims Manual in accordance with the guidelines adopted by the Assembly and to submit to its next session in spring 2014 the information relating to the experts, both in terms of standards and the current list of experts.</li></ul> <p><u>Supplementary Fund Assembly and 1971 Fund Administrative Council</u></p> <p>Note the decision taken by the 1992 Fund Assembly.</p>

### 1 **Introduction**

- 1.1 The 1992 Fund is currently dealing with compensation claims and/or recourse actions relating to ten incidents.
- 1.2 As the IOPC Funds' website indicates "claims are assessed according to criteria established by the Governments of Member States. These criteria, which also apply to claims against the Supplementary Fund, are set out in the 1992 Fund's Claims Manual, which is a practical guide on how to present claims for compensation".
- 1.3 It appears, in the light of the experience of France, that certain assessment practices of the IOPC Funds do not seem to have been validated by the IOPC Funds' Member States nor, at this stage, brought to their attention.
- 1.4 It is with this objective in mind that France is proposing the adoption of guidelines to improve the functioning of the Funds, and to facilitate dialogue between the IOPC Funds' experts and the States affected by an incident. In an Annex to this document, the Assembly can find information on the findings of France with regard to the assessment methods used by the IOPC Funds to assess the loss to a State in the event of an incident.

## **2 Guidelines for assessing the loss to a State in the event of an incident**

France invites the 1992 Fund Assembly to examine the following proposals which could form guidelines for assessing the loss to a State in the event of an incident:

### **2.1 Guidelines relating to experts**

2.1.1 In accordance with the recommendations formulated by the Comptroller and Auditor General of the National Audit Office in October 2012, the IOPC Funds should submit to Member States the list of standards required in terms of qualifications and experience for the recruitment of IOPC Funds' experts.

2.1.2 The IOPC Funds should submit to Member States the complete list of experts presently working on current incidents, stating for each of them their qualifications and professional experience.

### **2.2 Guidelines relating to the submission of claims files**

2.2.1 The IOPC Funds should establish a model format for the claims file of a State, in order to facilitate discussions with the IOPC Funds' experts.

2.2.2 The IOPC Funds should establish, in this framework, an exhaustive list of supporting documents which may be required from a State in the event of an incident. This list will thus be the same for all States and will ensure that all States are treated equally. This list must be complete to avoid supporting documents which are impossible to obtain several years after the incident being requested by the Funds' experts in the course of examination of the State's compensation claim.

2.2.3 The IOPC Funds must expressly set out in this list the level of detail required with regard to personnel costs incurred by the State in its oil spill response.

### **2.3 Guidelines on references taken into account by the IOPC Funds**

2.3.1 The IOPC Funds should apply the Claims Manual strictly and take into account the data (currents, weather, availability of equipment, etc) available at the time decisions were made and use the information tools available to the maritime authorities at the time of the events (for example, if certain air and naval resources were the only available means of intervention in an emergency, the use of such means must not be disputed).

2.3.2 The IOPC Funds should base their assessment of the reasonable cost of resources engaged on the actual cost of air and naval resources applicable in the State affected by the pollution.

2.3.3 The IOPC Funds should submit evidence to justify the challenging of decisions taken, in order to allow a technical debate between the authorities of the affected State and the IOPC Funds' experts.

2.3.4 The IOPC Funds should not reject all compensation if they consider that the cost of oil spill response operations is disproportionate to the results achieved, but should only set the compensation at a reasonable amount.

**3 Action to be taken**

The 1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) note the information contained in this document;
- (b) examine the proposals set out in section 2; and
- (c) request the IOPC Funds Secretariat to amend the Claims Manual in accordance with the guidelines adopted by the Assembly and to submit to its next session in spring 2014 the information relating to the experts, both in terms of standards and the current list of experts.

Supplementary Fund Assembly and 1971 Fund Administrative Council

The Supplementary Fund Assembly and 1971 Fund Administrative Council are invited to note the decision taken by the 1992 Fund Assembly.

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## ANNEX

### Findings of France concerning the assessment methods of the IOPC Funds

These findings were established in the course of the dialogue engaged with the IOPC Funds after the *Prestige* oil spill (2002). It may be recalled that the oil tanker *Prestige* broke in two on 19 November 2002 off the coast of Spain, resulting in considerable pollution to the Spanish, Portuguese and French coasts. As the IOPC Funds limits were insufficient to compensate all the victims in the three States affected by the pollution, the French State stood last in the queue of French beneficiaries of compensation from the IOPC Funds in order to allow higher compensation of the French victims. Thus, France's proposals will not have any financial impact on the 1992 Fund, but seek to clarify the process of future decisions.

#### **1 Cost of air and naval resources engaged in response to a major pollution incident**

- 1.1 In accordance with the Claims Manual, which is not questioned by the French State, the experts only included the reasonable costs of the measures taken by a State in response to the pollution resulting from the *Prestige* incident, ie 50% of the fixed costs plus the additional costs. To distinguish between fixed costs and additional costs, the experts identify separately the actual costs of each resource used (depreciation, personnel costs...) and calculate a daily cost.
- 1.2 In France, the costs of aircraft, ships, vehicles and military and administrative personnel belonging to the French State are calculated with precision each year by the Ministry of Defence. For each type of ship and aircraft, additional expenditure (fuel, maintenance) is distinguished from current expenditure (depreciation, personnel) following specific scales of costs.
- 1.3 These highly detailed scales of costs were applied to the compensation claim relating to the response operations against the pollution caused by the *Prestige* presented by the French State.
- 1.4 However, to assess the reasonable costs of the measures taken by France in response to the pollution at sea, the IOPC Funds' experts, taking the view that the French rates were too high, did not rely on the scales of costs provided by the French State but those of other States. However, the scales of costs provided by the French State allow the experts to distinguish precisely between fixed costs and the additional costs for each measure taken.

#### **2 Appropriateness of decisions taken by a State to tackle an oil spill**

- 2.1 The Claims Manual states that "claims for the costs of measures to prevent or minimise pollution damage are assessed on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures are reasonable for the purpose of compensation under the Conventions. The technical reasonableness is assessed on the basis of the facts available at the time of the decision to take the measures".
- 2.2 The IOPC Funds' experts dispute, on this basis, the need for measures taken by the French State to respond to the pollution. They consider that some aircraft, helicopters or ships, too expensive in their judgement, should not have been used even though they were the only resources available to respond in an emergency. They thus make themselves the judge of the appropriateness of the decisions taken, several years after the incident, without having been present at the operations.
- 2.3 The French authorities have had to deal with many large oil spills and have real competence in this field. With regard to pollution, it is necessary to act as quickly as possible, taking into account the circumstances of the pollution, the competence of those involved, and the availability and endurance of air and naval resources at the time of the crisis. If the French maritime authorities had not deployed certain air and naval resources and had waited until more suitable resources had become available, the impact of the oil spill on the coasts would have been much greater and the clean-up costs would have been multiplied.

- 2.4 The maps showing the drifting of the oil slicks show that the pollution continued to arrive on the French coasts up to December 2003. The measures adopted were effective and resulted in a reduction in the quantities of oil reaching the French coasts. However, the IOPC Funds' experts considered that after 10 May 2003, the measures taken to respond to the pollution at sea were ineffective and should no longer be eligible for compensation, based on the Claims Manual which provides that "claims for costs of response measures are not accepted when it could have been foreseen that the measures taken would be ineffective. [...] The costs incurred, and the relationship between those costs and the benefits derived or expected, should be reasonable". In the event, a strict application of the Claims Manual should lead to a reduction in the compensation for the cost of operations at sea after that date, but not a total refusal to pay compensation.

### **3 Supporting documents and submission of the expert assessment report**

- 3.1 The IOPC Funds' experts also demand the payslips of every person involved in the clean-up operations at sea and onshore. Payslips are personal documents which the State cannot provide to third parties. The remuneration paid to military personnel, as well as other administrative staff, is calculated according to administrative scales specific to their respective categories. These scales were provided along with the details of involvement of each person.
- 3.2 Lastly, the detailed expert assessment report presented by the IOPC Funds' experts to the French State is not organised in the same way as the claims file of the French State. It is thus impossible for the French State to know precisely which invoices were accepted or refused and which supporting documents are missing.