



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

ASSEMBLY
10th session
Agenda item 14

FUND/A.10/11
27 July 1987

Original: ENGLISH

AMENDMENTS TO THE INTERNAL REGULATIONS

Note by the Director

Introduction

1 The IOPC Fund's Internal Regulations were adopted by the Assembly at its 2nd session in April 1979 (documents FUND/A.2/4 and FUND/A.2/16/1, paragraph 7).

2 The Internal Regulations may be amended by the Assembly (Regulation 15.1). Amendments were adopted at the 3rd, 4th, 5th, 6th and 9th sessions of the Assembly (documents FUND/A.3/15, paragraph 9, FUND/A.4/16, paragraph 13, FUND/A.5/16, paragraph 13, FUND/A.6/14, paragraph 17.2 and FUND/A.9/18, paragraph 17.1).

3 At its 9th session, the Assembly adopted a proposal by the Director to amend Internal Regulation 5.4 (documents FUND/A.9/14, paragraphs 11-17, and FUND/A.9/18, paragraph 17.1). In that connection, the Assembly instructed the Director to examine whether further amendments to that Regulation were necessary (document FUND/A.9/18, paragraph 17.2). This document deals with this question.

Internal Regulation 5.4

4 Internal Regulation 5.4 deals with amendments to the reports on receipts of contributing oil submitted by Member States to the IOPC Fund in accordance with Regulation 5.1. The practice of the IOPC Fund has developed in a way which was not foreseen when Regulation 5.4 was adopted.

5 Under Internal Regulation 5.1, each Contracting State shall forward to the Director an annual report specifying the names and addresses of all persons who, in the preceding calendar year,

received within the territory of the Contracting State concerned oil in respect of which contributions are to be paid in accordance with Article 10 of the Fund Convention. The report shall contain details of the quantities of contributing oil received by all such persons during that year. It shall reach the Director not later than 31 March each year.

6 Under Article 12.2 of the Fund Convention, the Assembly shall for each person liable to contribute to the IOPC Fund determine the amount of his annual contribution. Under the practice developed in the IOPC Fund, the Assembly does not determine the amounts payable by the individual contributors. Instead, the Assembly determines the total amount of contributions to be levied. On the basis of this decision, the Director calculates the amount of contribution for each person liable to pay contributions. For this purpose, the Director divides the total amount of contributions decided by the Assembly by the total quantity of contributing oil reported by all Contracting States for the relevant year, thereby arriving at an amount per tonne of contributing oil (cf Article 12.3 of the Fund Convention). If there are States which have not yet submitted their reports at the time of the Director's calculation, he makes an estimate of the quantities that will be reported by these States based on their respective reports of the previous year.

7 It sometimes happens that a Contracting State, after submitting its report, changes it by amending the quantities reported in respect of one or more persons. Under Internal Regulation 5.4, in its original wording, the Director should then, at the end of the calendar year, recalculate the annual contributions in accordance with Article 12 of the Fund Convention, using the amended quantities. Any differences between the contributions paid or invoiced and the recalculated contributions should be taken into account in preparing the invoices for the persons concerned for the next year in respect of which annual contributions are raised.

8 In the document submitted to the 9th session of the Assembly, the Director stated that, in his opinion, Internal Regulation 5.4 was ambiguous. If the intention of this Regulation was that the Director should take into account the amended quantities for the particular contributors whose reports have been amended, it only stated the obvious. If, on the other hand, the purpose of this Regulation was that the Director should recalculate the contributions for all contributors who were affected by the amendment, ie because the total quantity of contributing oil reported to the IOPC Fund had changed, it would force the Director to recalculate the contributions for all contributors. In practically all cases, the difference for the individual contributor would be minimal.

9 The Director also informed the Assembly of the following practice of the IOPC Fund in cases where oil reports are amended. Invoices are usually sent out by the end of October. Any amendments to the reports on oil receipts made before the invoices are sent out are automatically taken into account for the calculation of the contributions payable by the individual contributors concerned. If a contributor, on receiving his invoice, contacts his Government and establishes that the quantity reported by the Government is wrong, the Government will notify the IOPC Fund that the quantity should be corrected. The Director will then issue a new invoice to this contributor, on the basis of the corrected quantity. No recalculations are made in respect of other contributors.

10 The Director proposed that Internal Regulation 5.4 be amended to reflect clearly the practice which has been developed. The Assembly approved the Director's proposal and adopted a revised text of Regulation 5.4 which reads as follows:

"Where amendments are made to the quantities of contributing oil reported in accordance with Regulation 5.1, whether or not as a consequence of action on the part of the Director under Regulation 5.3, the Director shall recalculate the annual contributions for the contributors whose reported quantities have been amended in accordance with Article 12 of the 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.

11 In addition, the Assembly instructed the Director to examine whether further amendments to Internal Regulation 5.4 were necessary for the purpose of authorising the Director to recalculate the contributions for all contributors if amendments to the reports on contributing oil receipts would significantly affect the total quantity reported in respect of all Member States (document FUND/A.9/18, paragraph 17.2).

Examination by the Director

12 The Director has carried out an examination of this issue, as instructed by the Assembly. However, he has not been able to identify any practical case in which there would be a need for a recalculation of the contributions for all contributors. Internal Regulation 5.4 deals with the situation where reports on the receipts of individual contributors are amended by Governments.

Experience has shown that there are only very few amendments in respect of the receipts in a given calendar year which are made after the Director has calculated the annual contributions, and the amendments in respect of the receipts in a given year, when taken together, have so far only led to a small reduction of the total quantity of contributing oil received in all Member States. In fact, in respect of a given year, the aggregate quantity of the amendments has not exceeded a few million tonnes, which represented a very small fraction of the total quantity of contributing oil.

13 If, in a given year, amendments were made to several reports after the Director's calculation of the annual contributions, reducing the quantities of contributing oil received by the contributors concerned, this would lead to a reduction of the aggregate quantity of oil received and thus of the total amount of contributions paid to the IOPC Fund in respect of that year. Experience gained during the IOPC Fund's eight years of operation, however, has shown that a recalculation of the contributions for all contributors would result, even for the largest contributors, in only a relatively small increase in their contributions. To recalculate all contributions would not, therefore, be justified in view of the complications it would cause, since many of the contributors would already have paid the amounts originally invoiced. The fact that, without recalculation of all contributions, the total amount received will be somewhat smaller than the total levy determined by the Assembly does not cause any problems for the IOPC Fund. If the levy were for the general fund, the "lost amount" would be compensated for by a corresponding increase of the levy for the general fund in the following year. As regards a major claims fund, the reduction in the amount of contributions received would result in a correspondingly lower amount remaining in that fund on the closure of the major claims fund account, or a correspondingly higher additional levy to that fund, if an additional levy were necessary in order to enable the IOPC Fund to pay all claims and expenses resulting from the relevant incident.

14 In the rare event of an amendment to a report resulting in an increase of the quantity reported for a given contributor, a new invoice would be issued to that contributor based on the higher quantity. If the levy were for the general fund, the resulting extra amount of contributions received would be added to that fund, to the benefit of all contributors the following year. As far as a major claims fund is concerned, the additional amount would be credited to that fund and eventually taken into account when the final decision was made on the closure of the major claims fund account.

15 It should be noted that, for those contributors in respect of whom reports are submitted after the date when the Director calculates the amount of contribution per tonne of contributing

oil, the invoices issued after the submission of the relevant reports are, of course, based on the quantities actually reported. These quantities normally differ from the quantities estimated by the Director in connection with this calculation (cf paragraph 6 above).

16 In view of the foregoing, the Director proposes that no further amendments be made to Internal Regulation 5.4 for the time being.

Action to be Taken by the Assembly

17 The Assembly is invited to consider the information contained in this document and to take such decisions in respect of Internal Regulation 5.4 as it considers appropriate.
