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OIL POLLUTION  
COMPENSATION  
FUND

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## **PREPARATIONS FOR THE ENTRY INTO FORCE OF THE 1992 PROTOCOL AMENDING THE 1971 FUND CONVENTION**

### **CAPPING OF CONTRIBUTIONS**

Note by the Director

#### **1 Introduction**

Article 36 ter of the 1992 Fund Convention reads as follows:

1 Subject to paragraph 4 of this Article, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 27.5% of the total amount of annual contributions pursuant to the 1992 Protocols to amend the 1971 Fund Convention, in respect of that calendar year.

2 If the application of the provisions in paragraphs 2 and 3 of Article 12 would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 27.5% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced pro rata so that their aggregate contributions equal 27.5% of the total annual contributions to the Fund in respect of that year.

3 If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be increased pro rata so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4 The provisions in paragraphs 1 to 3 of this Article shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons or until a period of 5 years after the date of entry into force of the said 1992 Protocol has elapsed, whichever occurs earlier.

## **2 Application of capping to oil received in different years and levies over several years**

2.1 Application of the provisions on capping in Article 36 ter could give rise to certain problems, especially with regard to the method to be used to cap contributions payable in respect of individual calendar years.

2.2 The total amount of annual contributions payable by contributors in respect of a given calendar year may not necessarily comprise solely contributions assessed on the basis of oil quantities received during one particular year, but may include contributions assessed on the basis of oil received in previous years. For example, as regards annual contributions levied in 1998, contributions payable to the general fund would be based on oil received in 1997, but contributions to a major claims fund to cover an incident which occurred in 1997 would be based on oil received in 1996.

2.3 On the other hand, contributions to a major claims fund assessed on the basis of oil received during a given calendar year may be levied by the Assembly not just in respect of one year, but also as part of the annual contributions for several years. For example, contributions to the *Haven* Major Claims Fund, based on oil received in 1990, were levied by the Assembly in 1991 and 1992.

2.4 It appears that there are two options as to the application of the capping provisions, viz to apply the capping to the total of all levies made in one year or to apply the capping to each levy made to individual funds in a given year.

## **3 Application of capping to the total of all levies made in one year**

It could be argued that capping should be applied to the total of all levies decided by the Assembly in one year. This method would result, however, in contributors in certain States having to share the burden of capping in respect of a major claims fund relating to a given incident to which they are not liable to contribute, since those States were not Members of the 1992 Fund at the time of that incident. It appears, therefore, that this would not be an acceptable method for redistributing the amount to which the capping provisions would apply.

## **4 Application of capping to each fund in respect of each year**

4.1 The other method would be to apply the capping provisions separately to each levy decided by the Assembly for a given year for the general fund and for each major claims fund. Such a solution would be in conformity with Article 36 ter, paragraph 1, which uses the wording "the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year". As mentioned above, the levies decided by the Assembly in one year may be based on oil receipts during different calendar years for various funds. In the Director's view, this method would also be the most practical one.

4.2 It is proposed that, if the method set out in paragraph 4.1 were to be used, the assessments should be made in such a way that the basic levy and the additional capping levy (or capping deduction, in respect of contributors in a capped State) are shown separately in the Fund's accounts and on the invoices sent to contributors.

4.3 An example of how capping might be carried out in respect of a general fund levy of £2 million is given in Annex I.

## **5 Submission of oil reports**

5.1 Experience within the 1971 Fund has shown that a number of States do not submit their oil reports by the due date. For the purpose of establishing the tonnage to be used when calculating the levy per tonne, the Secretariat estimates the quantities of oil received in States which have not reported. These estimates are based on previous years' reports, if any.

5.2 In the light of this experience, it would probably be necessary for the 1992 Fund to use such estimates when determining whether contributions in respect of a particular State exceed 27.5% of the total levy. If the quantities given in the reports submitted after the invoices have been calculated were to be considerably higher than predicted, this might result in the capped State no longer representing more than 27.5% of the total quantity of contributing oil actually reported. A recalculation of the contributions at that stage, however, would cause significant difficulties both for contributors and for the Fund Secretariat. It is therefore proposed that no adjustment be made in this situation.

5.3 It will be imperative for the smooth operation of the 1992 Fund that Member States fulfil their obligations under the 1992 Fund Convention and the Internal Regulations (proposed Internal Regulation 4, reproduced in document FUND/A.18/13/2, pages 7-9) to submit their reports on contributing oil at the time and in the manner prescribed. The Assembly of the 1992 Fund may therefore wish to consider adopting a resolution to this effect (cf Resolution N°7 of the 1971 Fund). A draft resolution is attached at Annex II for consideration.

5.4 The assessment of whether contributions will have to be capped in respect of a particular levy could be made either by the Assembly or by the Director on the basis of instructions given by the Assembly. The advantage of the Director making the decision at the time of invoicing would be that more oil reports might be submitted in the few weeks between the time of the Assembly's decision to levy and the calculation of the invoices. There would therefore be a clearer picture of whether the quantity of contributing oil received in a particular State did in fact exceed 27.5% of the total quantity received in all Member States for the year in question. Member States may prefer, however, that this decision be taken by the Assembly.

## **6 End of capping period**

6.1 Under paragraph 4 of Article 36 ter, the capping provisions shall operate "until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons" or until five years after the entry into force of the Fund Protocol, whichever is the earlier. From the information available to the Secretariat, it is likely that the quantity of 750 million tonnes will be reached well within the five-year period, probably within 12-18 months of the entry into force of the 1992 Fund Convention.

6.2 One approach would be to consider separately for each fund whether the quantity of 750 million tonnes had been reached for that fund. For the general fund, the applicable tonnage would be the total of (a) the full tonnage of States which are Members for the whole year in question and (b) the tonnage of States which become Members during the year reduced pro rata to reflect the portion of the year during which the Convention applied (cf Internal Regulation 3.6 of the 1971 Fund and proposed Internal Regulation 3.4 of the 1992 Fund). For a major claims fund the applicable tonnage would be the full tonnage of States which were Members on the date of the incident in question. It is suggested, however, that the system would become too complex if this approach were adopted. It is therefore proposed that the capping procedure should no longer apply in respect of decisions to levy contributions taken by the Assembly after the date on which the reported total quantity of contributing oil received in all Member States exceeds 750 million tonnes. This latter approach is, in the Director's view, in conformity with the wording of Article 36 ter, paragraph 4.

**7      Matters to be addressed**

The Assembly of the 1992 Fund will be invited to consider whether:

- (a) capping should apply to each levy separately;
- (b) invoices should indicate the basic levy and the capping levy (or deduction) separately;
- (c) the Assembly or the Director should make the decision to cap;
- (d) to adopt a Resolution urging Member States to submit their oil reports on time and in the manner prescribed; and
- (e) no further capping should be applied in respect of decisions to levy contributions taken by the Assembly after the date on which the reported total quantity of contributing oil received in all Member States exceeds 750 million tonnes.

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ANNEX I

**EXAMPLE OF THE CAPPING OF CONTRIBUTIONS  
IN RESPECT OF A GENERAL FUND LEVY OF £2 MILLION**

Assumptions

10 Member States on 1 January 1997	Oil receipts during 1996 (tonnes): State (a)	270 000 000
	State (b)	100 000 000
	States (c)-(j)	<u>230 000 000</u>
		600 000 000
4 States join 1 October 1997 (ie Members for 3 months only)	Oil receipts during 1996 (tonnes): States (k)-(n)	100 000 000
General Fund levy decided on 15 October 1997: £2 000 000		

General Fund Basic Levy

General Fund total tonnage	= 600 000 000 + (100 000 000 x 25%)	= 625 000 000
General Fund basic levy	= $\frac{£2\,000\,000}{625\,000\,000}$	
	= £0.0032000 per tonne	
State (a)	£0.0032000 x 270 000 000	= £864 000 43.2% of levy
State (b)	£0.0032000 x 100 000 000	= £320 000 16.0% of levy
States (c)-(j)	£0.0032000 x 230 000 000	= £736 000 36.8% of levy
States (k)-(n)	£0.0032000 x (100 000 000 x 25%)	= <u>£80 000</u> 4.0% of levy
		£2 000 000

General Fund Cap

27.5% of levy	=	£550 000	
State (a) basic levy as above	=	£864 000	
Amount for redistribution (ie capping levy)	= 864 000 - 550 000		= £314 000
Applicable tonnage for capping levy	= 330 000 000 + (100 000 000 x 25%)	= 355 000 000	
Capping levy	= $\frac{£314\,000}{355\,000\,000}$		
	= £0.0008845 per tonne		
State (b)	£0.0008845 x 100 000 000	= £88 450	
States (c)-(j)	£0.0008845 x 230 000 000	= £203 435	
States (k)-(n)	£0.0008845 x (100 000 000 x 25%)	= <u>£22 113</u>	
		313 998	

Overall General Fund Result

State (a)	27.5% capped amount	= £550 000	27.5% of levy
State (b)	320 000 + 88 450	= £408 450	20.4% of levy
States (c)-(j)	736 000 + 203 435	= £939 435	47.0% of levy
States (k)-(n)	80 000 + 22 113	= <u>£102 113</u>	5.1% of levy
		£1 999 998	

**ANNEX II**

*DRAFT*

**Resolution N°[ ] - Submission of Oil Reports**

**THE ASSEMBLY OF THE INTERNATIONAL OIL POLLUTION COMPENSATION FUND, 1992 (1992 Fund),**

**AWARE** of the obligations imposed on Member States to submit reports on receipts of contributing oil in accordance with Article 15.2 of the 1992 Fund Convention,

**RECOGNISING** that these reports will be crucial for the functioning of the 1992 Fund, as the levying of contributions is based on these reports,

**NOTING** that these reports will also be essential in determining when the capping provisions of Article 36 ter of the 1992 Fund Convention shall cease to apply,

**RECALLING** that the experience of the 1971 Fund has been that reports do not always reach the Secretariat on time or in the manner laid down, and that some reports are incomplete,

**URGES** Member States to take the necessary steps to ensure that the reports on contributing oil received in their territory are submitted in time, using the prescribed forms, and that the reports contain the particulars prescribed in the 1992 Fund Convention and in the Internal Regulations,

**AND REQUESTS** Member States in which no person is liable to contribute to the IOPC Fund to submit reports certifying that this is the case in respect of the State concerned as prescribed in the Internal Regulations.

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