



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

ASSEMBLY
20th session
Agenda item 26

71FUND/A.20/24/1
6 October 1997

Original: ENGLISH

ASSESSMENT OF ANNUAL CONTRIBUTIONS

PRO-RATING OF GENERAL FUND CONTRIBUTIONS

Note by the Director

1 Introduction

1.1 In the light of the fact that at least 24 States will be leaving the 1971 Fund during 1998, and that many more denunciations are expected in the future, certain questions have arisen in respect of the pro rating of contributions (or credits) in respect of the General Fund. The matter is submitted for consideration by the Assembly at this stage in case the position taken by the Assembly on this issue might have a bearing on the assessment of contributions to the General Fund set out in document 71FUND/A.20/24.

1.2 It should be noted that the question of pro rating does not arise for contributions to Major Claims Funds, since contributions to such funds are made by receivers of contributing oil in States which are Parties to the 1971 Fund Convention on the date of the incident in question (cf Article 12.2(b)), and the obligation to make such contributions continues to apply after a State has denounced the 1971 Fund Convention (cf Article 41.5).

2 Internal Regulation 3.6

2.1 When the 1971 Fund's Internal Regulations were adopted in 1979, at the Assembly's 2nd session, the text of Regulation 3.6 read as follows (document FUND/A.2/4/1):

3.6 In respect of any State for which the Fund Convention is not in force on 1 January of a particular year, the annual contribution to be paid by each person in that State for that year, in accordance with Article 12.2(a) of the Fund Convention, shall be calculated pro rata for that part of the calendar year for which the Convention is in force for that State.

2.2 At its second extraordinary session, held in June 1996, the Assembly amended the Regulations (and the modifications were carried over *mutatis mutandis* to the 1992 Fund's Regulations). Article 3.6 was amended to allow for General Fund contributions to be pro-rated for contributors in States which ceased to

be Members of the 1971 Fund, as well as those in States which joined the 1971 Fund (document 71FUND/A/ES.2/15, paragraph 3(a)). The revised text adopted by the Assembly reads (document 71FUND/A/ES.2/22/3):

3.6 In respect of any State for which the 1971 Fund Convention is not in force for the whole of a particular calendar year, the annual contribution to be paid to the General Fund by each person in that State for that year, in accordance with Article 12.2(a) of the 1971 Fund Convention, shall be calculated pro rata for that part of the calendar year for which the Convention is in force for that State.

3 Application of the pro-rating system

3.1 The system of pro rating provided in Internal Regulation 3.6 has been applied over the years by, for example, pro-rating 1995 General Fund contributions (decided by the Assembly in October 1995) payable by contributors in a State for which the 1971 Fund Convention entered into force during 1995.

3.2 Following the introduction of a deferred invoicing system, the Assembly decided at its 2nd extraordinary session that General Fund contributions in respect of contributors in a State which became a Member of the 1971 Fund during a particular year should be calculated on a *pro rata* basis for the deferred levy as well as for the first levy of that year's annual contributions, with the same pro rating for each levy. The Assembly also decided that General Fund contributions in respect of contributors in a State which ceased to be a Member of the 1971 Fund during a particular year would be pro-rated for the deferred levy as well as for the first levy of that year's annual contributions, with the same pro rating for each levy (document 71FUND/A/ES.2/22, paragraphs 11.5 and 11.6). As a result of these discussions, the Internal Regulations were amended as set out in paragraph 2.2 above. An example given by the Director in a document submitted to the Assembly was that, for a State which ceased to be a Member of the 1971 Fund on 1 December 1996, the contributors in that State would pay 334/365ths of any deferred levy to the General Fund which might be invoiced for payment by, say, August 1997 (document 71FUND/A/ES.2/11, paragraph 5.11)

3.3 Since the introduction of deferred invoicing in 1996, no contributors in a Member State have become liable to pay deferred contributions which are subject to pro-rating. As regards the 1992 Fund, however, deferred 1996 General Fund contributions were pro-rated in respect of all contributors. The question of the pro-rating of contributions - whether the initial levy or the deferred levy - with regard to a State which has denounced the Convention has not yet arisen for either the 1971 Fund or the 1992 Fund.

4 Article 41.5 of the 1971 Fund Convention

4.1 Article 41 of the 1971 Fund Convention deals with denunciations of that Convention. Paragraph 5 of that Article reads as follows:

Notwithstanding a denunciation by a Contracting State pursuant to this Article, any provisions of this Convention relating to the obligations to make contributions under Article 10 with respect to an incident referred to in Article 12, paragraph 2(b), and occurring before the denunciation takes effect shall continue to apply.

4.2 In respect of incidents which occur before the date on which the denunciation of the 1971 Fund Convention by a State has taken effect, Article 41.5 establishes an obligation on contributors in that State to pay Major Claims Fund contributions after that date. The Article makes no reference to any obligations in respect of General Fund contributions after a State has ceased to be a Member of the 1971 Fund.

5 Analysis of the problem

5.1 It would appear that Regulation 3.6 was modified by the Assembly at its 2nd extraordinary session (cf paragraph 3.2 above) as it was considered equitable for contributions in respect of a State to be pro-rated

for the period of a year during which that State was a Member of the 1971 Fund, whether for the part of the year after a State joined the Fund or for the part of the year until it ceased to be a Member of the Fund.

5.2 If it were decided, however, that there should not be pro-rating of General Fund contributions in respect of States which cease to be Members of the 1971 Fund, a number of problems would arise. These would relate, in particular, to the relationship between, on the one hand, the date on which a denunciation by a State becomes effective and, on the other hand, the date of an Assembly decision to levy (or reimburse) contributions, the date an invoice was issued and the date when payment is due. For example, in the case of a State which ceased to be a Member of the 1971 Fund on 1 December, it would seem inequitable that the State had protection for 11/12ths of the year but that contributors in that State would not be liable to pay contributions in respect of that period of cover.

5.3 The Director therefore considers that the text of Internal Regulation 3.6 should be maintained, and that, in respect of States which cease to be Members of the 1971 Fund, contributions to the General Fund should be pro-rated to reflect the period of the year during which a State was a Member and therefore benefitted from economic protection by the 1971 Fund in respect of oil spills occurring during that period. The Director maintains the view that pro-rating should apply also to deferred levies. He considers that pro-rating should apply to both payments of contributions to and reimbursements from the General Fund.

6 Action to be taken by the Assembly

The Assembly is invited:

- (a) to take note of the information contained in this document; and
 - (b) to consider the Director's proposal that the pro-rating of payments of contributions to and reimbursements from the General Fund, including deferred levies, should apply in respect of States which cease to be Members of the 1971 Fund.
-