



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

ADMINISTRATIVE COUNCIL  
12th session  
Agenda item 15

71FUND/AC.12/13/1  
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## INCIDENTS INVOLVING THE 1971 FUND

### AEGEAN SEA

#### Note by the Director

**Summary:**

An Agreement between the Spanish Government, the 1971 Fund, the owner of the *Aegean Sea* and his insurer was signed in Madrid on 30 October 2002, settling all outstanding issues arising from this incident. Pursuant to this agreement the 1971 Fund paid the Spanish Government €8 386 172 (£24 411 208). The Fund made further payments of €1 008 308 (£634 253) in respect of all claims which had been agreed as to the quantum but in respect of which only 40% of the agreed amounts had been paid. The compensation payments made by the Fund in respect of this incident total £33 086 019. The 1971 Fund has also paid indemnification of the shipowner for €1 672 000 (£1 068 767).

**Action to be taken:**

Information to be noted.

### 1 Introduction

This document reports on the settlement of all outstanding issues as regards the *Aegean Sea* incident which occurred off La Coruña (Spain) on 3 December 1992. As for the background, reference is made to the Annual Report 2002, pages 42-47 and to the document submitted to the Administrative Council at its February 2003 session (document 71FUND/AC.10/2).

### 2 Claims for compensation

- 2.1 The total amount of all the claims submitted before the criminal and civil courts in La Coruña was Pts 48 187 million (£184 million).
- 2.2 In view of the uncertainty as to the total amount of the claims arising out of the *Aegean Sea* incident, the Executive Committee decided initially to limit the 1971 Fund's payments to 25% of the established damage suffered by each claimant. This figure was increased to 40% in October 1994.

### **3      Global settlement**

- 3.1      At its 5th session, held in June 2001, the Administrative Council authorised the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and his insurer, the United Kingdom Mutual Steamship Assurance Association (Bermuda) Limited (UK Club) on a global solution of all outstanding issues in the *Aegean Sea* case, subject to certain conditions, and to make payments in accordance with such an agreement.
- 3.2      In a letter dated 27 July 2001, the Director made a formal offer on behalf of the 1971 Fund to the Spanish Government to conclude an agreement between the Spanish State, the Fund, the shipowner and the UK Club. This offer made the agreement conditional upon the withdrawal of the legal actions by claimants representing at least 90% of the total amount claimed in court.
- 3.3      On 4 October 2002 the Spanish State Council (Consejo de Estado) approved the proposed settlement agreement. The Spanish Parliament adopted a decree ('Decreto-Ley') authorising the Minister of Finance to sign on behalf of the Spanish Government an agreement between Spain, the shipowner, the UK Club and the 1971 Fund. This decree was approved by the Spanish Parliament on 17 October 2002. The Decree authorised the Spanish Government to make out-of-court settlements with claimants in exchange for the withdrawal of their court actions.
- 3.4      By 30 October 2002 the Spanish Government had reached agreements with claimants representing over 90% of the principal of the loss or damage claimed. The condition laid down in the 1971 Fund's offer was therefore fulfilled.
- 3.5      The agreement between the Spanish State, the 1971 Fund, the shipowner and the UK Club was signed in Madrid on 30 October 2002. A copy of the signed Agreement was attached to document 71FUND/AC.10/2.
- 3.6      Pursuant to the Agreement the 1971 Fund paid on 1 November 2002 €8 386 172 corresponding to Pts 6 386 921 613 (£24 411 208) to the Spanish Government.
- 3.7      During the period November 2002-September 2003 the 1971 Fund made payments of €1 008 308 (Ptas 167 768 311 or £ 634 253) in respect of all claims which had been agreed with the claimants as to the quantum at an early stage but in respect of which only 40% of the agreed amounts had been paid. These claims had not been included in the agreement with the Spanish Government.
- 3.8      The payments of compensation made by the 1971 Fund in respect of this incident total £33 086 019.
- 3.9      On 17 December 2002 the 1971 Fund paid €1 672 000 corresponding to Pts 278 197 307 (£1 068 767) to the UK Club in indemnification of the shipowner under Article 5.1 of the 1971 Fund Convention.
- 3.10     On 5 March 2003 the 1971 Fund paid €4 255 362 corresponding to Pts 708 032 614 (£2 861 790) to the UK Club in respect of its claim for preventive measures relating to the costs incurred in respect of the oil removal operation from the wreck.
- 3.11     The only outstanding issue is the reconciliation of the distribution of the costs incurred by the Fund and the UK Club in the employment of experts and the running of the Joint Claims Office in La Coruña in accordance with the Memorandum of Understanding signed by the International Group of P&I Clubs and the 1971 Fund, namely in proportion to their respective ultimate liabilities in respect of the incident. The distribution of these costs has been made provisionally on a 50:50 basis. However, the final distribution under the Memorandum should be 87.71:12.29. It is estimated that the reconciliation will result in the 1971 Fund paying the UK Club some £1.2 million.

**4      Court proceedings in respect of claims for compensation**

- 4.1      If a claimant has not proved the quantum of the damage suffered, the quantification may, under Spanish law, be deferred to the procedure for the execution of the judgement. In the *Aegean Sea* case, the Criminal Court of first instance and the Court of Appeal considered the evidence presented by many claimants to be insufficient to substantiate the amount of the losses suffered.
- 4.2      Upon a request from the majority of claimants involved in the procedure for the execution of the judgement, as well as from the 1971 Fund, the shipowner and the UK Club, the Court suspended the proceedings in respect of those claimants to allow discussions to be held on a global solution to the outstanding claims. As a result of the Agreement between the Spanish Government, the 1971 Fund, the shipowner and the UK Club, all claimants but nine have withdrawn their claims from the courts.
- 4.3      Legal proceedings in respect of the nine claims referred to above are still continuing before the Spanish Courts. It is expected that the Spanish Government will reach a settlement with those claimants in the near future.

**5      Action to be taken by the Administrative Council**

The Administrative Council is invited to take note of the information contained in this document.

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