



INCIDENTS INVOLVING THE 1971 FUND

AEGEAN SEA

Note by the Director

Summary:

The total amount of all the claims submitted before the criminal and civil courts in the *Aegean Sea* case is Pts 48 187 million (£177 million). Compensation has been paid in respect of 838 claims for a total amount of Pts 1 905 million (£8.5 million).

In July 2001 the 1971 Fund made an offer to the Spanish Government to conclude an agreement between the Spanish State, the Fund, the shipowner and his insurer containing a global solution of all outstanding issues. Information is given on the developments in respect of the offer.

Action to be taken: Information to be noted.

1 Introduction

- 1.1 This document sets out the developments as regards the *Aegean Sea* incident which occurred off La Coruña (Spain, 3 December 1992), ie the court proceedings and the proposed agreement on a global solution of all outstanding issues between the Spanish State on the one hand, and the shipowner, his insurer and the 1971 Fund, on the other hand. As for the background, reference is made to the Annual Report 2001, pages 47-52.

2 Claims for compensation

- 2.1 Claims totalling some Pts 22 750 million^{<1>} (£87 million) were presented before the Criminal Court of La Coruña in respect of losses suffered by fishermen and shellfish harvesters and the costs of clean-up operations.
- 2.2 Sixty-three claims totalling Pts 24 255 million (£92 million) were presented in the Civil Court of La Coruña by a number of companies and individuals, principally in the mariculture sector, who had not submitted any claims in the criminal proceedings but who had indicated in those proceedings that they would present their claims at a later stage in civil proceedings.

<1> As from 1 January 2002 the euro has replaced the Spanish peseta at a rate of 1 €= 166.386 pts.

- 2.3 The shipowner's insurer, the United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Ltd (UK Club), also presented claims in the Civil Court of La Coruña in respect of clean-up and preventive measures associated with salvage operations for Pts 1 182 million (£4.5 million). These claims were settled in October 2000 for Pts 661 million (£2.5 million).
- 2.4 The total amount of all the claims submitted before the criminal and civil courts is Pts 48 187 million (£184 million).
- 2.5 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.
- 2.6 Compensation has been paid in respect of 838 claims for a total amount of Pts 1 905 million (£8.5 million). Out of this amount, the UK Club has paid Pts 814 million (£3.3 million) and the 1971 Fund has paid Pts 1 091 million (£5.2 million).

3 Court proceedings in respect of claims for compensation

- 3.1 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 such a case, the court is obliged to determine the criteria to be applied for the assessment of the quantum of the damage suffered. 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. The Courts found that only six claims were substantiated by acceptable evidence, totalling Pts 815 million (£3.1 million). All the other claims for about Pts 16 110 million (£61 million) were referred to the procedure for the execution of the judgment.
- 3.2 Upon a request from the majority of claimants involved in the procedure for the execution of the judgment, as well as from the 1971 Fund, the shipowner and the UK Club, the Court suspended the proceedings in respect of those claimants. Three claimants involved in the procedure for the execution of the judgement did not agree that the proceedings should be suspended. Proceedings in respect of these claims are therefore continuing.
- 3.3 On 27 August 2002 the Court dealing with the execution of the judgement issued an order requesting the UK Club and the 1971 Fund to pay into court the amount awarded by the Criminal Court of first instance in favour of Repsol Petroleo, a Spanish oil company, of Pts 110 559 854 (£420 000). The 1971 Fund has appealed against this order, stating that the claims by Repsol against the shipowner, UK Club and the Fund have been settled out of court and paid in full^{<2>}.

4 Main outstanding issues

- 4.1 There are three main outstanding issues in the *Aegean Sea* case:
- the quantification of the losses, except those for which an amount was determined by the Courts;
 - the distribution of liabilities between the Spanish State and the shipowner/UK Club/1971 Fund; and,
 - the issue of time bar in respect of the claimants who brought action in the civil courts.

With respect to the main outstanding issues, reference is made to the IOPC Funds' Annual Report 2001, pages 49-51.

<2> These claims were paid in full against a bank guaranty provided by Repsol (cf. document 71FUND/EXC.57/15, paragraphs 3.2.44 to 3.2.52).

4.2 During 2000 and 2001 fruitful and constructive discussions were held between the 1971 Fund and representatives of the Spanish Government. During these discussions both parties maintained their positions on the distribution of liabilities and on the issue of time bar. It was recognised by both sides that these matters would be for the Spanish courts to decide unless an out-of-court settlement was reached. Although maintaining their respective positions, the parties recognised that there was always some uncertainty as to the outcome of court proceedings on these very complicated issues.

5 Proposal for a global settlement

5.1 At its 5th session held in June 2001 the Administrative Council decided to authorise the Director to conclude and sign on behalf of the 1971 Fund an agreement with the Spanish State, the shipowner and the UK Club on a global solution of all outstanding issues in the *Aegean Sea* case, provided the agreement contained certain elements and to make payments in accordance with such an agreement. The basic element was that in the light of the Court of Appeal's judgements in respect of the distribution of liabilities and the assessment of the losses, the total amount payable by the shipowner, the UK Club and the 1971 Fund would be set at Pts 9 000 million (£34 million). The Council noted that the 1971 Fund would pay indemnification to the shipowner/UK Club pursuant to Article 5.1 of the 1971 Fund Convention amounting to Pts 278 197 307 (£1 million).

5.2 The Administrative Council emphasised that the 1971 Fund's offer to conclude a global settlement on the basis of the elements set out above was without prejudice to the Fund's position in respect of the issues of distribution of liabilities and time bar.

5.3 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, which contained the following elements laid down by the Administrative Council:

- a) The total amount due by the owner of the *Aegean Sea*, the UK Club and the 1971 Fund to the victims as a result of the distribution of liabilities determined by the Court of Appeal in *La Coruña* amounts to Pts 9 000 million (€54 million or £31 million).
- b) The sum payable by the 1971 Fund to the Spanish State, after deduction of certain sums, amounts to Pts 6 386 921 613 (€38 million or £24 million).
- c) In addition, the 1971 Fund undertakes to pay to the victims whose claims have not been included in those agreed with the Spanish State and who are listed in an Annex to the Agreement, the difference between the total agreed amount of the loss or damage and the amount paid to date, amounting to Pts 121 512 031 (€730 000 or £463 000).
- d) As a consequence of the distribution of liabilities determined by the Court of Appeal in *La Coruña*, the Spanish State undertakes to compensate all the victims who may obtain a final judgement by a Spanish court in their favour which condemns the shipowner, the UK Club or the 1971 Fund to pay compensation as a result of the incident.

5.4 In the letter the 1971 Fund made it a condition for the conclusion of the Agreement that the Spanish State presented to the 1971 Fund a copy of the withdrawals by the victims of their legal actions representing at least 90% of the principal of the loss or damage claimed, except for the claim by the UK Club for preventive measures. It was stated that the 1971 Fund was prepared to reach a global agreement with the Spanish State on the settlement of all claims for loss or damage pursuant to the 1969 Civil Liability Convention and the 1971 Fund Convention resulting from the *Aegean Sea* incident in accordance with the text of the proposed Agreement provided that this

condition was fulfilled. In the letter the 1971 Fund undertook to maintain this offer until November 2001. It was stated in the letter that the shipowner, the UK Club and the 1971 Fund expressly reserved their rights to defend before the Spanish courts and tribunals their position with respect to the distribution of liabilities and with respect to a group of claims being time-barred. The letter and the text of the proposed Agreement had been approved by the shipowner and the UK Club.

6 Consideration by the Administrative Council at its October 2001 and July 2002 sessions

- 6.1 At the Administrative Council's 6th session, held in October 2001, the Spanish delegation stated that the Spanish Government had accepted the conditions set out in the Agreement and in the Director's letter, in order to reach an overall settlement of the incident. That delegation also stated that the Spanish Government was making its best endeavours to reach agreements with claimants in respect of at least 90% of the principal of the loss or damage claimed, as well as to obtain the withdrawals of the associated legal actions. The Spanish delegation stated that the various groups of claimants were participating in the negotiations with open minds and with a willingness to reach an overall agreement, and that it was hoped that the required conditions would be met by the end of November 2001.
- 6.2 At the request of the Spanish Government, the 1971 Fund has successively extended the period for acceptance of the offer to 28 February 2002, 31 May 2002 and 31 October 2002.
- 6.3 At the Administrative Council's 8th session held in July 2002 the Spanish delegation expressed its confidence that it would be possible to reach agreements between the Spanish Government and the claimants in spite of the complexity of the issues involved. That delegation informed the Council that the Spanish Government had reached agreements with claimants representing 85% of the principal of the loss or damage claimed and that it was expected that 90% would be reached within the next few weeks. The delegation stated that the Spanish Government would present to Parliament by the end of September 2002 an Act that would enable the global settlement to be concluded. The Spanish delegation stated that it was the Spanish Government's intention that the claimants would be compensated before the end of 2002.

7 Recent developments

- 7.1 The proposal for a global settlement is under consideration by the Spanish State Council, and it is expected that the State Council will render its decision shortly. If the proposed settlement is approved by the State Council, it will have to be considered by the Spanish Government and thereafter by the Spanish Parliament. It is likely that the Government and the Parliament will consider the proposal in October 2002.
- 7.2 Once the Spanish Government and the Parliament have approved the proposed settlement, the Spanish State will be in a position to accept formally the offer made by the 1971 Fund. It is expected the settlement agreement will be concluded before the end of December 2002.
- 7.3 The 1971 Fund's payments will be made shortly after the conclusion of the Settlement Agreement.

8 Action to be taken by the Administrative Council

The Administrative Council is invited:

- (a) to take note of the information contained in this document; and
- (b) to give the Director such other instructions as the Council may deem appropriate in respect of this incident.
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