



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

ASSEMBLY  
2nd extraordinary session  
Agenda item 11

71FUND/A/ES.2/11  
15 May 1996

Original: ENGLISH

## LEVYING OF CONTRIBUTIONS

### CONSIDERATION OF A DEFERRED INVOICING SYSTEM

#### Note by the Director

#### **1 Introduction**

1.1 Article 12 of the 1971 Fund Convention provides that the Assembly shall determine the amount of annual contributions to be levied, if any. For this purpose the Assembly shall make an estimate in the form of a budget of the 1971 Fund's expenditure and income for each calendar year, taking into account the necessity to maintain sufficient liquid funds.

1.2 The 1971 Fund's expenditure consists of:

- (a) costs and expenses of the administration of the IOPC Fund, and any deficit from preceding years;
- (b) payments of claims up to 15 million (gold) francs, equivalent to one million Special Drawing Rights (SDR), per incident (minor claims); and
- (c) payments of claims to the extent that the aggregate amount of the payments in respect of any one incident is in excess of 15 million (gold) francs (major claims).

Expenses mentioned in sub-paragraphs (a) and (b) above have to be met from the General Fund (Financial Regulation 5.1(c)) and expenses in respect of major claims as defined in sub-paragraph (c) above have to be met from Major Claims Funds (Financial Regulation 5.2(d)).

1.3 At its 18th session, held in October 1995, the Assembly noted the concern of some delegations that the 1971 Fund had in recent years levied considerable sums of money to Major Claims Funds well in advance of compensation being paid. It was recognised, nevertheless, that this had become unavoidable, since many more claims were submitted to the Fund by small businesses and individuals, and that it was important that the Organisation had the necessary funds so that payment of compensation

could be made at the earliest opportunity. The Assembly instructed the Director to study this matter, specifically as regards the relationship between the size of the working capital and the levying of contributions (document FUND/A.18/26, paragraph 18.2).

1.4 In the Director's view, the issue addressed by the Assembly is important not only for the 1971 Fund but also for the 1992 Fund.

1.5 The Director has carried out a study of this matter, and the results are set out in the present document.

## **2 Consultations with the oil industry**

In December 1995 the Director met representatives of the oil industry to discuss various aspects of the levying and payment of contributions to the 1971 and 1992 Funds. The representatives of the oil industry indicated that they would welcome a system which would considerably reduce the build-up of large sums of money within the 1971 Fund. They indicated that a system where the invoicing was deferred in respect of part of the amount of contributions fixed by the Assembly would reduce the need for the build-up of large sums of money.

## **3 Deferred invoicing system**

3.1 During the last three years, the Assembly decided to levy significant amounts in contributions (£78 million, £40 million and £43 million, respectively). Part of the contributions levied was not used during the following year, because for various reasons payments of compensation were not made at the time or in the amounts envisaged when the Assembly decided to levy contributions in October. This resulted in a build-up of significant assets.

3.2 The amount held by the 1971 Fund could be reduced if a system of "deferred invoicing" were introduced. Under such a system the Assembly would fix the total amount to be levied in annual contributions for a given calendar year. At the same time the Assembly would decide that only a specific amount should be invoiced for payment by 1 February in the following year, the remaining part to be invoiced later in the year if it should prove to be necessary.

3.3 The Director is of the view that a deferred invoicing system, the details of which are set out below, could be considered in respect of both the 1971 Fund and the 1992 Fund. It should be noted that Major Claims Funds under the 1992 Fund Convention will be established in respect of payments in excess of 4 million SDR (approximately £3.9 million) for any given incident, as opposed to the threshold of 1 million SDR (£965 000) under the 1971 Fund Convention.

3.4 In considering whether to introduce a system of deferred invoicing, it is important to recall that since its establishment it has been the policy of the 1971 Fund that victims of oil pollution incidents should be compensated as soon as possible. This has been the policy underlying the decisions of the Assembly and the Executive Committee in respect of claim settlements, and it has guided the Director in his negotiations with claimants. With regard to minor and medium-sized incidents, payments are usually made within a short period of time, provided that claims are submitted promptly and that they are accompanied by sufficient supporting documentation. Claims arising out of major incidents have also been paid promptly in many cases. Prompt payments can be guaranteed only, however, if the 1971 Fund's liquid assets are maintained at an adequate level.

#### **4 Outline of a deferred invoicing system**

4.1 In the Director's view, the advantages of a deferred invoicing system would relate mainly to levies to Major Claims Funds. It should, however, be possible to use such a system also for levies to the General Fund.

4.2 It would not be very practicable to convene an extraordinary session of the Assembly in order to decide on whether to issue the invoices for the additional amount authorised by the Assembly. For this reason, the Assembly might wish to consider authorising the Director to make that decision. In the case of the 1971 Fund (but not the 1992 Fund), it would be possible for such a decision to be delegated to the Executive Committee. Greater flexibility would be achieved, however, if the decision were left to the Director. This document is based on the assumption that the decision would be left to the Director.

##### General Fund

4.3 The difficulty in establishing the appropriate level of contributions to the General Fund stems from the fact that the annual contributions for a given calendar year have to cover a long period, for example October 1996 - 1 February 1998. The General Fund must be sufficient to meet payments not only in respect of incidents which have occurred before the Assembly decision on the levy is taken, but also in respect of incidents occurring during the following 15 months. There is also the possibility that the incidents which were known at the time of the Assembly decision become costlier than estimated at that time. In the past, the General Fund provided loans for payments of claims arising from incidents which in principle should be made from a Major Claims Fund to ensure prompt payment, pending the levy and receipt of sufficient contributions in the Major Claims Fund in question. For these reasons, the IOPC Fund needs to maintain a sizeable working capital. This will be even more important under the 1992 Fund Convention where the maximum payment from the General Fund in respect of any given incident is 4 million SDR.

4.4 It would nevertheless be possible to use a deferred invoicing system for the General Fund. The Assembly might decide, for example, to levy a total amount of £12 million to the General Fund, but decide that invoices for payment by 1 February should be issued for only £8 million and that the Director should be authorised to invoice contributions for the balance, £4 million, or part thereof, if the need arose.

##### Major Claims Funds

4.5 Under a deferred invoicing system, the Assembly would decide, for each Major Claims Fund, the total amount to be levied and the part of this amount to be invoiced for payment by 1 February, authorizing the Director to invoice the balance or part thereof, if the need arose. For example, the Assembly could fix the levy to a particular Major Claims Fund at £30 million, and decide that £15 million should be invoiced for payment by 1 February, authorising the Director to invoice the balance, £15 million, or part thereof, for payment at a later date if this were necessary to enable the 1971 Fund to make payments of claims.

##### Timing

4.6 If a system of deferred invoicing were to be introduced, the question would arise as to when deferred invoices should be issued. One option would be for the deferred invoices to be issued only at a specified time each year (possibly in May/June for payment by 1 August, ie six months after the regular payment date of 1 February). Another option would be for the deferred invoicing to be carried out as and when necessary to have funds available for the payment of compensation. The latter approach would give the 1971 Fund considerable flexibility.

4.7 It has been suggested that contributors would prefer there to be a fixed time for the deferred levy. It should also be borne in mind that any system of additional invoicing would increase the workload on the Secretariat considerably. The Secretariat would face extra administrative burden, however, if levies were to be made more frequently than twice in a year. For these reasons, it is proposed that deferred invoices should not be issued more than once per calendar year.

## **5 Questions relating to pro rata calculations of annual contributions to the General Fund**

5.1 Regulation 3.6 of the Internal Regulations of the 1971 Fund provides as follows:

"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."

5.2 The question of pro rating does not arise for 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)).

### **Designation of deferred levies**

5.3 Since the establishment of the IOPC Fund in 1978, annual contributions (both to the General Fund and to Major Claims Funds) have been levied in the following way. The Assembly has based its decision in say October 1995 on an estimate of the need for liquid assets the following year, 1996. The contributions decided in October 1995 have been designated "1995 annual contributions", although they would be treated as income for the 1996 financial period.

5.4 If the Assembly were to introduce a system of deferred invoicing applicable to the General Fund, the question arises whether, for example, a deferred levy to the General Fund invoiced in May/June 1997 for payment by 1 August 1997 following a decision of the Assembly in October 1996 would be considered as part of the 1996 annual contributions, the first levy of which was due by 1 February 1997. This question is of relevance for contributors in a State which becomes a Member of the 1971 Fund during a particular year, in say March 1997 in the above example.

5.5 The system of pro rating provided in Internal Regulation 3.6 has been applied on the basis of the way in which contributions have been levied as set out in paragraph 5.3 above. Pro rating has thus been applied in respect of 1995 annual 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.

5.6 It is submitted that it would be very awkward to modify the system of pro rating contributions which has been applied for 18 years, at least for the 1971 Fund.

5.7 In the Director's view, it is important that the introduction of a system of deferred invoicing should not lead to unnecessary complications. For this reason, the Director suggests that the total amount of the levy decided by the Assembly should be treated in the same manner, whether invoiced for payment by 1 February or at a later date, ie as an integral part of the 1996 annual contributions in the above example in paragraph 5.4.

5.8 A further question which arises in respect of contributors in a State which becomes a Member of the 1971 Fund during a given year is whether the *pro rata* payment to a deferred levy to the General Fund would be calculated for the period during which the State was a Member of the 1971 Fund as a proportion of the whole year or as a proportion of the period from the due payment date to the end of the year. For the reason set out in paragraph 5.7, it is suggested that the deferred levy should, in this respect also, be considered as an integral part of the total contributions for the year in question.

Consequently, for a State which becomes a Member of the Fund on, for example, 1 December 1996, the contributors in that State would also pay 31/365ths of any deferred levy which might be invoiced for payment by August 1997.

Contributions to the General Fund in respect of States which denounce the 1971 Fund Convention

5.9 Any decision taken by the Assembly on how to designate deferred levies (cf paragraph 5.7 above) would also be relevant for contributors in a State which ceases to be a Member of the 1971 Fund.

5.10 In its present wording, Regulation 3.6 of the Internal Regulations of the 1971 Fund does not provide for *pro rata* calculations for contributors in a State which ceases to be a Member of the 1971 Fund. The Assembly is invited to consider whether the annual contributions to the General Fund paid by persons in a State which denounces the 1971 Fund Convention should be calculated *pro rata* for the part of the year during which that State is a Member of the 1971 Fund. The Assembly might wish to consider the following amendment to Regulation 3.6:

"In respect of any State for which the 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 Fund Convention, shall be calculated *pro rata* for that part of the calendar year for which the Convention is in force for that State."

5.11 If the Assembly were to decide that *pro rating* should apply for contributors in a State which ceases to be a Member of the 1971 Fund, any decision taken by the Assembly on the question of *pro rata* payments (cf paragraph 5.8) would also be relevant for contributors in a State which denounces the 1971 Fund Convention. It is suggested that for a State which ceases to be a Member of the 1971 Fund on 1 December 1996, for example, the contributors in that State would pay 334/365ths of any deferred levy to the General Fund which might be invoiced for payment by August 1997.

**6 Action to be taken by the Assembly**

The Assembly is invited:

- (a) to consider the information contained in the present document;
  - (b) to decide whether to introduce a system of deferred invoicing and, if so, determine the details of such a system: and
  - (c) to decide on certain questions relating to the *pro rating* of contributions, namely:
    - (i) the *pro rating* of deferred levies to the General Fund for contributors in a State which becomes a Members of the 1971 Fund during the relevant year; and
    - (ii) the *pro rating* of contributions to the General Fund for contributors in a State which ceases to be a Member of the 1971 Fund during the relevant year.
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