



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND

EXECUTIVE COMMITTEE
39th session
Agenda item 3

FUND/EXC.39/7
4 May 1994

Original: ENGLISH

INCIDENTS INVOLVING THE IOPC FUND

PAYMENTS BY THE COMMISSION OF THE EUROPEAN COMMUNITY

Note by the Director

1 Introduction

1.1 At its 38th session, the Executive Committee noted that payments had been made to some claimants by the Commission of the European Community in respect of the AEGEAN SEA incident. The Director was instructed to contact the Commission to obtain further information in respect of its payments following that incident as well as payments following other incidents.

1.2 Pursuant to these instructions, the Director visited Brussels on 12 April 1994 for discussions on this issue with representatives of the competent Directorate-Generals of the European Commission. Subsequently, certain issues have been clarified by correspondence. The results of these discussions are set out below.

2 Payments Made by the Commission

2.1 The European Commission has allocated funds in respect of the AEGEAN SEA, BRAER and ILIAD incidents. Two Directorate-Generals of the European Commission have been involved, namely Directorate-General XI (Environment, Nuclear Safety and Civil Protection) and Directorate-General XIV (Fisheries).

Directorate-General XI

2.2 As regards the AEGEAN SEA incident, payments were made by Directorate-General XI as a symbol of European Community solidarity. In the decision authorising these payments, it was stated that they were outside any other form of economic or structural aid in compensation for damage ("en

dehors et en sus de toute autre forme d'aide économique ou structurelle en compensation de dommages"). Emergency humanitarian aid was granted to 1 939 persons who lost income as a result of the incident. The total amount granted was 605 000 ECU (£470 410) which was paid through the Spanish authorities. So far 1 806 persons have received Pts46 237 (£230) each. The Commission has also made a contribution of 320 000 ECU (£248 810) out of a total cost of 1 159 419 ECU towards an ecological survey of the affected area to check the recovery of the ecosystem. Finally, the Commission has given financial support amounting to 6 600 ECU (£5 130) to a small group of ecologists who took action to protect the fauna and flora. The representative of the Commission stated at the meeting in Brussels that the Commission would not reclaim any of the amounts mentioned above.

2.3 With regard to the BRAER incident, payments were made through Directorate-General XI in respect of emergency humanitarian aid for the population of Shetland. A total amount of 700 000 ECU (£544 275) was paid to the Shetland Islands Council for distribution to individuals on the basis of criteria laid down by the Council. It appears that a fixed sum was distributed by the Council to persons living within a certain distance of the grounding of the BRAER, without there being any connection between the amount paid and the damage suffered, and without establishing whether the person receiving the money had in fact suffered any damage at all. The Commission also authorised a contribution to the cost of an ecological survey of the affected area, to be carried out under contract by Aberdeen University Research and Information Services Ltd. The Commission has granted 320 000 ECU (£248 810) towards the total cost of the survey at 1 200 000 ECU (£933 040). Finally, the Commission has granted 25 000 ECU (£19 440) to support Shetland Enterprise Co Ltd in co-ordinating the distribution of funds to finance voluntary agencies and ecologist groups working to protect fauna and flora. So far, the amount granted to Shetland Enterprise Co Ltd has not been paid, since no request for payment has been made by the United Kingdom Government. The representative of the Commission stated at the meeting in Brussels that the Commission would not reclaim any of the amounts referred to in this paragraph.

2.4 With respect to the ILIAD incident, no funds have been allocated by Directorate-General XI.

2.5 In view of the information set out above, the Director considers that the funds allocated by Directorate-General XI would not cause any difficulties in relation to the regime of compensation established by the Civil Liability Convention and the Fund Convention. These payments, possibly with small exceptions, related to items which would not be admissible under the Conventions. In addition, as has been stated above, the Commission will not claim reimbursement of these amounts.

Directorate-General XIV

2.6 Funds have been allocated by Directorate-General XIV in respect of the AEGEAN SEA, BRAER and ILIAD incidents. These payments give rise to certain difficulties from the IOPC Fund's point of view.

2.7 With respect to the AEGEAN SEA incident, a so-called "tie-up allowance" was granted in favour of owners and crews of fishing boats which were prevented from fishing as a result of the oil spill. A maximum amount of 1 626 840 ECU (£1 264 930) was granted, to be distributed by the Spanish authorities on the basis of criteria laid down in the Commission's decision, namely 340 ECU (£265) per day per fisherman and 50 ECU (£40) or 37.5 ECU (£30) per day per boat, the amount depending upon the age of the boat. In the decision it is stated that the payment by the Commission depends on the effective cessation of the activities of the vessels and crews during the period covered by the compensation.

2.8 In the decision in respect of the AEGEAN SEA incident, it is also stated that the aid would be considered as a reimbursable advance should it be found that accident insurance covers this cost and that, if so, the Commission would take the necessary measures to ensure repayment. It has been stated by a representative of the Commission that the term "accident insurance" was intended to cover also compensation under the Civil Liability Convention and the Fund Convention. In the Director's view, the payments made by the Commission referred to in paragraph 2.7 above relate to losses which in

principle, if proven, would qualify for compensation under the Civil Liability Convention and the Fund Convention. The Director takes the view, therefore, that these Community aid payments should be deducted from any compensation payable under the Conventions. At the meeting in Brussels, the representative of the Commission stated that he shared this view.

2.9 Concerning the BRAER incident, aid granted by Directorate-General XIV was intended to cover the expenses incurred by Shetland Seafood Quality Control Ltd, Shetland Salmon Farmers' Association and Shetland Fish Producers' Organisation in carrying out a programme of action designed to testify the quality and restore the image of marine fishery and salmon farm production in the Shetland Islands. The amount granted totalled 568 000 ECU (£441 640), representing 50% of the costs. No payment has so far been made, since the United Kingdom Government has not submitted the required programme to the Commission for approval.

2.10 In its decision concerning the BRAER incident referred to in paragraph 2.9 above, the Commission stated that the aid would be considered as an advance that was partially or totally reimbursable, should it be found that accident insurance covered these costs. However, this item related to expenditure which in the Director's view would not fall within the scope of Civil Liability Convention and the Fund Convention. The representative of the Commission agreed with this position, and the Commission would therefore not claim reimbursement of any amounts thus paid.

2.11 As regards the ILIAD incident, funds were allocated by Directorate-General XIV under several headings. Firstly, compensation was granted to fishermen in respect of fishing vessels affected by the spill in order to minimise the consequences of the suspension of the fishing activities, as well as in respect of certain expenses for cleaning and replacing fishing gear. A total amount of 94 184 ECU (£73 230) has been granted, and the Government of Greece will contribute an additional 31 395 ECU (£24 410). The amounts granted have been calculated for the replacement of gear on the basis of the number of ships in three ports, and for the lay-up allowance on the basis of the period of lay-up of the ships in these ports. No payment has been made so far, since the Government of Greece has not presented a programme of intervention to the Commission for acceptance.

2.12 A contribution of 55 772 ECU (£43 360) has also been allocated by the Commission in respect of the ILIAD incident to fish farmers to support fish farm construction and to maintain the balance of the ecosystem. No payment has so far been made since the Government of Greece has not presented a programme of intervention to the Commission for acceptance. In addition, financial support amounting to 164 316 ECU (£127 760) has been granted to implement a programme of research for study of the impact of the pollution on the fishery and fish stocks in the Gialova lagoon. No payment has so far been made, since the Greek Government has not presented any programme of intervention to the Commission for acceptance.

2.13 In the decision by the Commission in respect of the aid granted in relation to the ILIAD incident referred to in paragraphs 2.11 and 2.12 above, it is stated that the aid would be considered as a reimbursable advance should it be found that accident insurance covered these costs.

2.14 As regards the compensation to fishermen in respect of the ILIAD incident set out in paragraph 2.11 above, this payment relates to losses which, in the Director's view, in principle, if proven, would qualify for compensation under the Civil Liability Convention and the Fund Convention. The Director takes the view, therefore, that Community aid payments under this item should be deducted from any compensation payable under the Conventions. At the meeting in Brussels, the representative of the Commission stated that the Commission shared this view.

2.15 Concerning the contribution to fish farmers and the research programme referred to in paragraph 2.12 above in respect of the ILIAD incident, the Director considers that these payments relate to costs or losses which do not fall within the scope of application of the Civil Liability Convention and the Fund Convention and that, therefore, these payments would not be recoverable under the Conventions. At the meeting in Brussels, the representative of the Commission stated that the Commission agreed with this position, and the Commission would therefore not claim reimbursement of any amounts thus paid.

2.16 During the discussions, the Director drew the Commission's attention to the fact that in order for the Commission to be entitled to reclaim from the IOPC Fund or the insurer any amounts paid to victims, the Commission must have acquired by subrogation the rights of the persons so paid against the shipowner, his insurer and the IOPC Fund, in accordance with the Conventions and the applicable national law.

3 Future Incidents

During the discussions at the meeting in Brussels, the Director mentioned that difficulties had arisen for the IOPC Fund due to the fact that the Commission had made payments in respect of certain items which related to losses which, if proven, would in principle qualify for compensation under the Civil Liability Convention and the Fund Convention. He stated that in order to avoid complications, the Commission might consider concentrating on payments in respect of items not covered by the Conventions, such as payments to families of killed or injured crew members, studies of long-term effects of a given oil spill on the environment and measures to strengthen the infrastructure of the fishing industry. The Director also stated that, should the Commission make payments in respect of loss or damage covered by the Conventions, it would greatly facilitate matters if it were to be made clear to the Government and competent authorities of the State concerned as well as to the recipients of the funds allocated by the Commission that the amounts received would be deducted from any compensation payable under the Conventions and the applicable national law.

4 Action to be Taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in the present document;
 - (b) give the Director such instructions in respect of payments allocated by the European Commission in respect of the AEGEAN SEA, BRAER and ILIAD incidents as the Committee may deem appropriate; and
 - (c) take note of the Director's statement set out in paragraph 3 above.
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