



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
40th session  
Agenda item 3

FUND/EXC.40/5/Add.1  
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## INCIDENTS INVOLVING THE IOPC FUND

### AEGEAN SEA

Note by the Director

#### 1 Introduction

Meetings took place on 22 and 23 September 1994 in Spain with representatives of the national and regional authorities to discuss the situation as regards the claims presented by authorities, private companies and individuals. At the meetings a number of questions were considered. Two of these questions are dealt with in paragraphs 2 and 3 below.

#### 2 Provisional Payments

2.1 As set out in paragraph 3.1.3 of document FUND/EXC.40/5, the Executive Committee has decided that the IOPC Fund should at this stage only make partial payments in respect of accepted claims which should not exceed 30-40% of the amount approved. In view of the uncertainty of the situation the Director has decided to limit any payment by the IOPC Fund at least for the time being to 25% of the established damage suffered by the claimants concerned.

2.2 At the meetings referred to in paragraph 1 above concerns were expressed by the Spanish authorities that provisional payments were limited to 25% of the established damage, and it was requested that this percentage be reconsidered. The Director explained that in the light of the uncertainty as to the total amount of claims, it was not possible to increase that percentage because of the risk of over-payment. He stated that when the total amount of the claims could be determined with a higher degree of certainty, an increase of the percentage could be considered.

2.3 At the meetings the representatives of the Spanish authorities expressed the view that it was unlikely that the aggregate amount of all claims would exceed some Pts 24 000 million (£119 million).

### **3 Technical Committee**

3.1 In view of the difficulties encountered in the assessment of the claims presented by fishermen and shellfish gatherers, it was agreed at the meetings referred to in paragraph 1 above that a technical committee should be established in order to attempt to find acceptable methods of assessment of the losses sustained. The Committee comprises representatives of the national and regional governments, the local harbour master, the claimants (particularly representatives of the cofradías) and the technical experts appointed by the UK Club and the IOPC Fund. Three meetings of the Technical Committee have been held and efforts have been made to establish an agreed methodology for the assessment of the losses.

### **4 Claims in respect of Social Security Payments**

4.1 At its 38th session, the Executive Committee considered claims which had been submitted by two public bodies responsible for making unemployment benefit payments in the amounts of Pts 9 505 770 (£45 050) and Pts 6 897 323 (£32 700). The payments had been made to 32 persons who allegedly had been made redundant due to the reduction in work as a result of the restrictions placed on fishery activities following the incident.

4.2 The Committee also examined a claim presented by one of these public bodies in the amount of Pts 38 184 756 (£181 000) for the contributions paid by this body to the Social Security System that the affected employers would have paid if their business activities would not have been suspended.

4.3 At the request of the Spanish Delegation, the Executive Committee decided to postpone its consideration of these claims to its 39th and then 40th session, so as to enable the Spanish Government to submit additional information, and to enable it to consider the results of the deliberations of the Intersessional Working Group on this matter.

4.4 The Spanish Government has advised the Director that there are indeed two public bodies responsible for matters of social security in Spain, as set out in paragraphs 4.5-4.8 below.

#### Instituto Social de la Marina (ISM)

4.5 ISM is a public body with responsibility for social security matters relating to seafarers, which includes fishermen but not land based shellfish gatherers. This body has submitted a claim in the amount of Pts 9 505 770 (£47 060) in respect of unemployment benefit payments made to employees whose employers were unable to operate their businesses following the incident, eg fishermen and mussel farm workers.

4.6 A second claim in the amount of Pts 38 184 756 (£189 030) has been submitted by ISM for the contributions to the Social Security System that would have been paid by the employers to the Social Security System had their business operations not been interrupted by the incident. Under Spanish law employers are obliged to continue paying contributions to the Social Security System in respect of employees made temporarily redundant, for a fixed period in order to maintain the rights and benefits of the now unemployed workers. In order to alleviate the employers' burden to pay contributions to the Social Security System, while the employer is not operating his business, by two Royal Decrees issued following the AEGEAN SEA incident, the employers' contributions are paid by the Spanish Treasury, under the management of ISM, to the Social Security System. The IOPC Fund has been informed that any amount paid by the IOPC Fund in respect of this part of the claim from ISM will be reimbursed to the Treasury, through ISM.

#### Instituto Nacional de Empleo (INEM)

4.7 INEM is a public body with responsibility for social security matters relating to all persons other than seafarers.

4.8 This body has submitted a claim in the amount of Pts 6 897 323 (£34 150) in respect of unemployment benefit payments made to employees whose employers were unable to operate their businesses following the incident, as explained in paragraph 4.5 above.

Director's assessment

4.9 Two of these claims (ie those for Pts 9 505 770 and Pts 6 897 323) represent payments made, in accordance with Spanish law, in respect of employees who were unable to work as a result of their employer being unable to carry out his normal business following the incident. The Director has noted that the relevant Spanish Law No.31 of 2 August 1984 developed by the Royal Decree N°625 of 2 April 1985 specifies the amounts to be paid and the period during which payments should continue to be made after an employee is no longer required to work.

4.10 The third claim (for Pts 38 184 756) represents also payments made in accordance with Spanish law (Royal Decrees 2/1993 and 3/1994, issued following the AEGEAN SEA incident) in respect of the contributions that affected employers should have to pay to the Social Security System if their businesses were not suspended by the pollution and that the Spanish Treasury, under the management of ISM, has already paid to the Social Security System in order to prevent the loss of rights of the workers of the affected employers.

4.11 The claims for social security payments represent a new type of claims. In the Director's view, an acceptance of these claims would broaden considerably the concept of "damage caused by contamination". The Director submits the issue of whether such claims are admissible to the Executive Committee for consideration.

**5 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 (paragraph 1);
  - (b) give the Director such instructions concerning the percentage payable as it may deem appropriate (paragraph 2); and
  - (c) make a decision in respect of the claims relating to social security payments (paragraph 4).
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