



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

EXECUTIVE COMMITTEE  
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Agenda item 3

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## INCIDENTS INVOLVING THE IOPC FUND

### Time-Bar Provisions

Note by the United Kingdom delegation

#### Introduction

1 The United Kingdom delegation would welcome clarification of the Executive Committee's interpretation and application of the time-bar provisions. This issue is relevant to three significant incidents which the Executive Committee is currently considering: *Aegean Sea*, *Braer* and *Haven*. At the time of writing, the UK had received only the paper on the *Aegean Sea* incident, which makes no mention of the time-bar.

2 Both the *Aegean Sea* and *Braer* are nearing their third anniversaries (3 December 1995 and 5 January 1996 respectively), when the time-bar provisions will begin to apply for most outstanding claimants. After three years from the date of the damage, claimants will lose their rights to compensation unless they take appropriate legal action.

3 The UK delegation is aware that some claimants are confused about how the time-bar provisions will affect their outstanding claims. This delegation considers that it is essential that victims of oil pollution are given clear guidance on how they should pursue legitimate claims for compensation.

4 There appear to be a number of instances where it is unclear whether legal action is necessary to protect claims:

- (a) **when the IOPC Fund has agreed a full settlement, but has only made a partial payment.** This has occurred in the case of the *Aegean Sea* incident, where the Committee has instructed the Director to make partial payments of agreed claims, in view of the probability that the total claims will exceed the limit on compensation per incident;

- (b) where the IOPC has agreed to pay a claim in principle, subject to further discussions on the quantum. Several outstanding claims from the *Braer* claim fall into this category. In some instances, the quantum cannot be agreed because the claimant has failed to provide sufficient information to justify his claim. In other instances, action rests with the Fund secretariat;
- (c) **where some elements of a claim are settled, but other elements remain under discussion.** The UK is aware of one claim following the *Braer* where settlement of one element has been agreed, but withheld subject to settlement of the remaining elements. It is unclear whether the claimant needs to take legal action to protect all or part of his claim.
- 5 We would welcome discussion of these instances to ensure consistency of handling.

### Legal costs

6 Legal action taken to protect rights to compensation will inevitably involve increased costs both for claimants and the IOPC Fund. These costs should be kept to a minimum to reduce the burden on contributors, to reduce the risk that the limit on compensation would be reached and that, where the limit is reached as in the *Aegean Sea* incident, to ensure that the maximum amount of compensation is available for victims.

7 Where extra legal costs are incurred in the settlement of a claim which is subsequently agreed, the UK considers that these costs should be reimbursed by the IOPC Fund. There remains some doubt as to whether, and the extent to which, the IOPC will compensate claimants for legal action to protect claims which are subsequently rejected.

8 The UK believes that the IOPC Fund should not be responsible for the legal costs of frivolous claims or those which have already been rejected by the Executive Committee, unless the Fund's decision is subsequently overturned by court action. However, there are a number of claims which may not have been agreed during the first three years of the incident because they are complicated, because they require research or because they involve new issues of principle. As the time-bar approaches, such a claimant would need to judge the probability of having his claim accepted against the chance that he might have to pay his own legal costs if his claim is rejected. It is possible that legitimate claimants may be pressurised into withdrawing their claim because they are concerned about the cost or complication of legal action, or because the legal costs are disproportionate to the quantum of their claim.

9 This delegation is of the view that this situation places an undue risk on the claimant. It is not consistent with the objective of the IOPC Fund to provide adequate and speedy compensation to victims. Accordingly, it is essential that the IOPC secretariat should make every effort to ensure that, where possible, all claims are settled before the time-bar is reached. This will also ensure that the costs to contributors are kept to a minimum.

### Conclusions

10 The UK delegation would welcome discussion and clarification of the position both on the operation of the time-bar and also on the question of legal costs incurred by claimants to avoid their claims being time barred.

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