



INTERNATIONAL
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COMPENSATION
FUND

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Agenda item 3

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INCIDENTS INVOLVING THE IOPC FUND

HAVEN

Document presented by France

1 Introduction

1.1 At the 44th session of the Executive Committee and the 18th session of the IOPC Fund's Assembly, the French delegation stated that the claimants who had complied with the time-bar rules should be compensated promptly since there appeared to be great difficulty in reaching an amicable global settlement.

1.2 As the Assembly had authorised the Executive Committee to approve at least partial payments to these claimants, the French delegation, in its capacity as an observer, submitted an official request for such payment at the Committee's 46th session.

1.3 In its request, the French Government proposed that the question of compensation of the French State and the payment of interest and legal costs to all French claimants should be deferred to a future session of the Executive Committee, after the Court of first instance in Genoa had taken a decision on the list of established claims ("stato passivo"). This proposal would make it possible for compensation to be paid immediately to the 31 French municipalities, the Direction départementale des services d'incendie et de secours du Var and the Parc national de Port-Cros.

1.4 If overpayments were made to the 33 French claimants, discussions would then be initiated between the IOPC Fund and the French Government at the time of the settlement of the Government's claim.

1.5 The discussions that took place during the 46th session and the position adopted by the Executive Committee are summarised in paragraphs 4.1.7 to 4.1.17 of document FUND/EXC.46/12.

2 Decision taken by the Executive Committee at its 46th session

2.1 After it had listened to some delegations, the Executive Committee deferred any decision on the French request to the 47th session. It took this position so that its decision would not interfere with the negotiations being conducted by the vessel's insurer.

2.2 Information on the state of the proceedings indicates that a prompt settlement of this case is unlikely. Therefore, the question of compensating certain claimants whose claims are not time-barred and have been admitted arises once more.

3 Extent of the State's guarantee

3.1 At the 46th session of the Executive Committee the French delegation, speaking as an observer, confirmed that by proposing to defer payment of its own claim, the State intended to safeguard the IOPC Fund against any overpayment up to the amount of any sums due to it.

3.2 The significance of the undertaking to negotiate in the event of any difficulties was not fully understood. In its commitment, the French Government attempted to provide the Fund with a guarantee while refusing to admit that compensation ceilings will be exceeded.

3.3 The French Government is currently under increasing pressure from claimants who cannot understand why they still have not been paid compensation despite the fact that the State and the IOPC Fund strongly encouraged them to reach an amicable settlement as to the quantum of their admissible claims.

3.4 France has consistently supported the IOPC Fund's policy and is particularly anxious that the Fund's positive image in France should be preserved. It is for this reason that, as we approach the 5th anniversary of the HAVEN incident, the Government wishes to go one step further by giving an undertaking to the IOPC Fund in the following terms:

"Should the full and immediate payment of compensation due to the 31 municipalities of the Var and Alpes Maritimes, to the Department of the Var (Direction départementale d'incendie et de secours) and to the Parc national de Port-Cros later result in an overpayment for the IOPC Fund, then the State would agree to such compensation as the State might be able to claim being reduced up to the amounts overpaid to the other French claimants".

3.5 In practice, this unconditional guarantee allows full payment to be made to the other 33 French claimants, as shown by the figures in the table attached to this document.

4 Interest and legal costs

4.1 The issue of interest and legal costs should be considered with regard to the French claimants in so far as the total amount of the admitted claims would be lower than the IOPC Fund's compensation ceiling.

4.2 Last July's agreements between the IOPC Fund and the French victims were reached in the context of an imminent global settlement that has since been abandoned.

4.3 No claim for interest was made in order to remain within the limits of the sums available in the context of an out-of-court settlement. The situation is no longer the same, and we can claim interest, in particular because many Italian claims are time-barred.

4.4 If the Italian courts finally recognise the time-bar, the IOPC Fund will have to pay the French claimants interest and legal costs. If, on the other hand, an out-of-court settlement were to be reached

at a later date, ie if the Italian State requests that a global settlement is reached on the same basis as that proposed last year, claims for interest and legal costs would be withdrawn.

5 Conclusion

5.1 The French Government recalls the position adopted by the Assembly of the IOPC Fund at its 18th session and requests the Executive Committee to authorise the Director to pay immediately and in full the claims presented by the 31 French municipalities, by the Direction départementale d'incendie et de secours du Var and by the Parc National de Port-Cros.

5.2 Such payments, made against the State's guarantee up to the amount of its own claim, would not prejudice any subsequent payment of interest and legal costs in accordance with the principles set out in section 4.

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EXTENT OF THE STATE GUARANTEE IN THE EVENT OF FULL PAYMENT TO THE OTHER FRENCH CLAIMANTS

(in French francs)

Claimants	Département du Var/SDIS	Municipalities	Parc national de Port-Cros	Sub-total (excl. State)	State
Claims admitted (1)	711 070.89	9 630 031.22	318 367.27	10 659 469.00	12 580 724.00
Compensation pro rata (2)	568 856.00	7 704 024.00	254 693.00	8 527 575.00	10 064 579.00
Risk of overpayment (3)	142 214.00	1 926 007.00	63 674.00	2 131 895.00	

(1) Document FUND/EXC.46/3 of 1 December 1995.

(2) Document FUND/EXC.43/2/1 of June 1995.

The amount available under the terms of the Conventions of 1969 and 1971 is Lit 102 643 800 000, to which should be added the interest accrued on by the shipowner's limitation fund which will be to the benefit of claimants (Lit 10 000 000 000 on the basis of an annual rate of 10%).
The sum available for compensation payments is therefore Lit 112 643 800 000.

The damage to the environment may be estimated at Lit 25 000 000 000, ie, the amount of the ex gratia payment proposed by the UK Club calculated according to Italian jurisprudence in the PATMOS case.

The total amount of the established claims, excluding ecological damage, may be evaluated as the sum available for compensation (the assumption made by the IOPC Fund in the context of the global settlement - cf FUND/EXC.43/2/1, paragraph 4.8). In these circumstances, 80% of each claim would be paid (81.83%).

(3) Assuming full payment to French victims other than the State.