



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1971

EXECUTIVE COMMITTEE  
61st session  
Agenda item 4

71FUND/EXC.61/9/Add.2  
26 April 1999

Original: ENGLISH

## INCIDENTS INVOLVING THE 1971 FUND

### NISSOS AMORGOS

Note by the Director

<b>Summary:</b>	Petroleos de Venezuela (PDVSA) has requested that the Executive Committee should reconsider the decision taken at its 60th session not to accept PDVSA's request to pay the balance of its claim against a bank guarantee.
<b>Action to be taken:</b>	Decide on PDVSA's request.

1 At its 60th session, the Executive Committee considered a request by Petroleos de Venezuela SA (PDVSA) that the 1971 Fund should pay the balance of the assessed amount of its claim for clean-up costs against a bank guarantee, even though payments for the time being were pro-rated at 25% of the assessed amounts (document 71FUND/EXC.60/10, section 7).

2 During the discussion, it was recognised that in the *Haven* and *Aegean Sea* cases the 1971 Fund had made payments of the balance of certain claims against bank guarantees and that in the *Aegean Sea* case such a payment had been made to a major oil company. A number of delegations nevertheless expressed reservations about such payments on the ground that it could be seen as giving preferential treatment to claimants who had the financial resources to provide bank guarantees.

3 Some delegations stated that in order to be able to take a position on this issue it would in any event be necessary to know the details of the proposed bank guarantee. It was pointed out that in order to protect the 1971 Fund it would be necessary to accept only first class banks as guarantors.

4 Some delegations expressed the view that if the 1971 Fund were in general to agree to making payments against bank guarantees, the Fund could face considerable practical difficulties if a large number of claimants offered such guarantees in cases where payments were pro-rated.

5 For the reasons set out in paragraphs 3 and 4, the Executive Committee decided not to accept PDVSA's request for full payment against a bank guarantee, (document 71FUND/EXC.60/17, paragraph 3.9.7).

6 In a letter to the Director received on 26 April 1999 PDVSA requested that the 1971 Fund should reconsider its decision in respect of payment to PDVSA against a bank guarantee. In the letter PDVSA sets out the following reasons in support of the request:

1.- The *Nissos Amorgos* incident should receive a treatment equal to that given to other similar incidents, such as the *Haven* (Italy) and the *Aegean Sea* (Spain) in respect of Repsol Petroleo, keeping in mind the 1971 Fund's principles of "equal treatment to all claimants".

2.- PDVSA is able to comply in full with every standard requirement that may apply to provide a safe guarantee to the 1971 Fund as security against overpayment if claims were later reduced pro-rata.

3.- The immediate payment of the balance would enable PDVSA to arrange the final disposal of the oily sand in accordance with a method known to the 1971 Fund.

4.- A delay in payment would mean that, as a result of inflation, the bolivars PDVSA finally receives from the 1971 Fund would be worth much less than the bolivars it spent.

**Action to be taken by the Executive Committee**

7 The Executive Committee is invited to consider the request by PDVSA.

---