



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND

SEVENTH INTERSESSIONAL  
WORKING GROUP  
Agenda item 2

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## CRITERIA FOR THE ADMISSIBILITY OF CLAIMS FOR COMPENSATION

LOSS OF INCOME OF LAID-OFF WORKERS AS CONSEQUENCE OF A MAJOR POLLUTION ACCIDENT

Note by the Spanish Delegation

### 1 Introduction

When a major pollution is produced as a direct consequence of a ship running aground, this incident, in accordance with the definitions provided in the International Convention on Civil Liability for Oil Pollution Damage (CLC 1969) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1971), has been the cause by which a certain number of commercial firms and factories have been adversely affected in their respective productive processes and, as a consequence, those firms are obliged to change their working conditions, such as, among others, to dismiss employees or to reduce their working time, which inevitably generates loss of income for these employees.

### 2 Requirements for Indemnification

The right to be compensated for loss of income, in accordance with the Conventions referred to above, is subject to the concurrence of the following requisites:

- 2.1 The existence of an incident which causes a pollution damage by escape or discharge of oil from a ship carrying such oil in bulk as cargo.

Since this requisite is clear, no further comment is required.

- 2.2 That is effectively caused a damage or loss.

In this regard, it is worth mentioning that under Spanish jurisdiction, any firm or commercial enterprise affected by the consequences of an incident may request to the Labour Authority the authorisation for the suspension or extinction of working relations with its employees, whenever there exist proved reasons for so doing.

In this regard, the Labour Authority must initiate an administrative process after which this Authority may decide the suspension or the extinction of working relations after hearing the representatives of the involved workers and the Labour Inspectorate. The regulations in force give exhaustive detail of the procedure and required documents.

If the Labour Authority considers that the event or accident giving rise to the adverse working conditions has been of an economical or technological or vis major character up to the extent that it has made the normal working conditions definitively impossible, this Authority will decide the extinction of working relations and exonerate the employer of the payment of compensation to the workers losing their income and eventually their jobs. The Law in Spain also provides the "Fondo de Garantía Salarial" (Salaries Guarantee Fund) to protect the workers in case of insolvency of employers.

The "Fondo de Garantía Salarial" pays the indemnifications to the workers and also reserves its right to require to the employer the reimbursement of the amounts paid. These payments are compatible with the eventual unemployment payment that the affected workers may be entitled.

However, the above quoted payments do not avoid a clear reduction in the workers' income. The reduction of the workers' income may widely differ among individual workers since not every worker is entitled to this payment and the amounts to be paid will be different by the reasons given in the pertinent regulations. In any circumstances, the normal income of the workers is higher than the amounts received under the concepts expressed.

- 2.3 That a link of causation exists between the produced damage and the incident generating the pollution.

With respect to the principle of the link of causation, it is necessary to highlight the real existence in this case of an "adequate causality" since the character of a cause can only be derived from the facts by which it be objectively possible to expect the production of a result.

When an incident occurs, an infinite chain of causes and effects is produced. Nevertheless, it is not difficult to evaluate the conditions and circumstances surrounding this event after which a first efficient cause is produced from which a cascade of instrumental causes that follow themselves in a mechanical way.

That particular cause, which produces the loss of income of the affected workers and without which loss of income would not have occurred, is the incident.

For this reason it is not possible to accept the simple criteria that the loss of income of the affected workers is generated by an act of the employer (immediate cause) that would exclude the remote cause (the incident).

In any respect in this case exists a reasonable proximity between the contamination and the loss for that the claim must be admissible.

### **3 Conclusions**

The Spanish Administration considers that the appropriate balance distorted by the damage must be restored and that the workers shall receive the appropriate compensation for the difference between what they would have received if the incident would have not occurred and what they really received.

It must be taken into account that the integral compensation of the damage caused is never guaranteed under the national system of unemployment payments. For this reason as well, the Spanish Administration concludes that the affected workers meet all the requisites to be compensated for their respective loss of income.

Finally, the right of the Spanish Administration to claim the payments made to the workers under the national unemployment scheme and the eventual payments made by the above referred Salaries Guarantee Fund must be recognised.

**4 Measures to be Requested to the Working Group**

The Working Group of the Executive Committee of the IOPC Fund is invited to consider the present information and to adopt the appropriate measures by which the workers that have suffered loss of income as a consequence of the accident, be included as victims entitled to be compensated.

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