

ASSEMBLY  
1st session  
Agenda item 17

## CAPPING OF CONTRIBUTIONS

**Note by the Director of the International Oil Pollution Compensation Fund**

### **1 Introduction**

Article 36 ter of the 1992 Fund Convention reads as follows:

1 Subject to paragraph 4 of this Article, the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year shall not exceed 27.5% of the total amount of annual contributions pursuant to the 1992 Protocol to amend the 1971 Fund Convention, in respect of that calendar year.

2 If the application of the provisions in paragraphs 2 and 3 of Article 12 would result in the aggregate amount of the contributions payable by contributors in a single Contracting State in respect of a given calendar year exceeding 27.5% of the total annual contributions, the contributions payable by all contributors in that State shall be reduced *pro rata* so that their aggregate contributions equal 27.5% of the total annual contributions to the Fund in respect of that year.

3 If the contributions payable by persons in a given Contracting State shall be reduced pursuant to paragraph 2 of this Article, the contributions payable by persons in all other Contracting States shall be increased *pro rata* so as to ensure that the total amount of contributions payable by all persons liable to contribute to the Fund in respect of the calendar year in question will reach the total amount of contributions decided by the Assembly.

4 The provisions in paragraphs 1 to 3 of this Article shall operate until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons or until a period of 5 years after the date of entry into force of the said 1992 Protocol has elapsed, whichever occurs earlier.

### **2 Application of capping to oil received in different years and levies over several years**

2.1 Application of the provisions on capping in Article 36 ter could give rise to certain problems, especially with regard to the method to be used to cap contributions payable in respect of individual calendar years.

2.2 The total amount of annual contributions payable by contributors in respect of a given calendar year may not necessarily comprise solely contributions assessed on the basis of oil quantities received during one particular year, but may include contributions assessed on the basis of oil received in previous years. For example, as regards annual contributions levied in 1998, contributions payable to the general fund would be based on oil received in 1997, but contributions to a major claims fund to cover an incident which occurred in 1997 would be based on oil received in 1996.

2.3 On the other hand, contributions to a major claims fund assessed on the basis of oil received during a given calendar year may be levied by the Assembly not just in respect of one year, but also as part of the annual contributions for several years. For example, contributions to the *Haven* Major Claims Fund, based on oil received in 1990, were levied by the Assembly in 1991 and 1992.

2.4 It appears that there are two options as to the application of the capping provisions, viz to apply the capping to the total of all levies made in one year or to apply the capping to each levy made to individual funds in a given year.

2.5 The Director of the 1971 Fund proposes that the capping system should apply separately for a given year to each levy for the general fund and to each levy for a major claims fund. In his view, this solution is in conformity with Article 36 ter, paragraph 1, which uses the wording "the aggregate amount of the annual contributions payable in respect of contributing oil received in a single Contracting State during a calendar year". As mentioned above, the levies decided by the Assembly in one year may be based on oil receipts during different calendar years for various funds.

2.6 During its consideration in October 1995 of the preparations for the entry into force of the 1992 Fund Convention, the Assembly of the 1971 Fund agreed with the solution proposed in paragraph 2.5 above.

2.7 It is proposed that the assessments should be made in such a way that the basic levy and the additional capping levy (or capping deduction, in respect of contributors in a capped State) are shown separately in the Fund's accounts and on the invoices sent to contributors. During its considerations in October 1995, the Assembly of the 1971 Fund considered that the contributors should be informed in an appropriate manner of the basic levy and the capping levy (or deduction in respect of contributors in a capped State) separately.

2.8 An example of how capping might be carried out in respect of a general fund levy of £2 million is given in the Annex.

### **3 Decision to apply capping**

3.1 Experience within the 1971 Fund has shown that a number of States do not submit their oil reports by the due date (cf document 92FUND/A.1/15). For the purpose of establishing the tonnage to be used when calculating the levy per tonne, the Secretariat estimates the quantities of oil received in States which have not reported. These estimates are based on previous years' reports, if any.

3.2 In the light of this experience, it would probably be necessary for the 1992 Fund to use such estimates when determining whether contributions in respect of a particular State exceed 27.5% of the total levy. If the quantities given in the reports submitted after the invoices have been calculated were to be

considerably higher than predicted, this might result in the capped State representing less than 27.5% of the total quantity of contributing oil actually reported. A recalculation of the contributions at that stage, however, would cause significant difficulties both for contributors and for the Fund Secretariat. It is therefore proposed that no adjustment be made in this situation.

3.3 The assessment of whether contributions will have to be capped in respect of a particular levy could be made either by the Assembly or by the Director on the basis of instructions given by the Assembly. During its consideration in October 1995 of the preparations for the entry into force of the 1992 Fund Convention, the Assembly of the 1971 Fund took the view that the Director of the 1992 Fund should make the decision at the time of invoicing of whether to cap contributions, since this would make it possible to base the decision on more complete figures on oil receipts than if the decision were taken by the Assembly.

#### **4 End of capping period**

4.1 Under paragraph 4 of Article 36 ter, the capping provisions shall operate "until the total quantity of contributing oil received in all Contracting States in a calendar year has reached 750 million tons" or until five years after the entry into force of the Fund Protocol, whichever is the earlier. From the information available to the Secretariat, it is likely that the quantity of 750 million tonnes will be reached well within the five-year period, probably within 18 months of the entry into force of the 1992 Fund Convention.

4.2 The question arises of how to determine the date on which the capping period should end. One approach would be to consider separately for each fund whether the quantity of 750 million tonnes had been reached for that fund. For the general fund, the applicable tonnage would be the total of (a) the full tonnage of States which are Members of the 1992 Fund for the whole year in question and (b) the tonnage of States which become Members during the year reduced *pro rata* to reflect the portion of the year during which the Convention applied (cf Internal Regulation 3.6 of the 1971 Fund and proposed Internal Regulation 3.4 of the 1992 Fund). For a major claims fund the applicable tonnage would be the full tonnage of States which were Members on the date of the incident in question.

4.3 During its consideration in October 1995 of the preparations for the entry into force of the 1992 Fund Convention, the Assembly of the 1971 Fund noted the view of the Director of the 1971 Fund that the capping procedure should not apply in respect of decisions to levy contributions taken by the Assembly of the 1992 Fund after the date on which the reported total quantity of contributing oil received in all Member States exceeded 750 million tonnes, and that this approach was in conformity with the wording of Article 36 ter, paragraph 4 of the 1992 Fund Convention. Most delegations shared this view. One delegation stated, however, that the question of when the application of the capping provisions should cease ought to be considered separately for each fund. The Director was instructed to study this issue further, bearing in mind that the majority of delegations favoured the former approach.

4.4 In the view of the Director of the 1971 Fund, the system would become too complex if the former approach were adopted, ie if levies to each fund were to be considered separately. It is therefore proposed that the capping procedure should no longer apply in respect of decisions to levy contributions taken by the Assembly after the date on which the reported total quantity of contributing oil received in all Member States exceeds 750 million tonnes.

**Action to be taken by the Assembly**

**5** The Assembly is invited to consider:

- (a) whether capping should apply to the total of all levies made in one year or to each levy separately (paragraph 2.5);
- (b) whether invoices should indicate the basic levy and the capping levy (or deduction) separately (paragraph 2.7);
- (c) whether the Assembly or the Director of the 1992 Fund should make the decision to apply capping (paragraph 3.3); and
- (d) how to determine when the capping procedure should no longer be applied (paragraph 4.4).

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ANNEX

**EXAMPLE OF THE CAPPING OF CONTRIBUTIONS  
IN RESPECT OF A GENERAL FUND LEVY OF £2 MILLION**

<u>Assumptions</u>			
10 Member States on 1 January 1997	Oil receipts during 1996 (tonnes):	State (a)	270 000 000
		State (b)	100 000 000
		States (c)-(j)	230 000 000
			600 000 000
4 States join 1 October 1997 (ie Members for 3 months only)	Oil receipts during 1996 (tonnes):	States (k)-(n)	100 000 000
General Fund levy decided on 15 October 1997: £2 000 000			
<u>General Fund Basic Levy</u>			
General Fund total tonnage	= 600 000 000 + (100 000 000 x 25%)		=625 000 000
General Fund basic levy	=	$\frac{£2\,000\,000}{625\,000\,000}$	
	=	£0.0032000 per tonne	
State (a)	£0.0032000 x 270 000 000	= £864 000	43.2% of levy
State (b)	£0.0032000 x 100 000 000	= £320 000	16.0% of levy
States (c)-(j)	£0.0032000 x 230 000 000	= £736 000	36.8% of levy
States (k)-(n)	£0.0032000 x (100 000 000 x 25%)	= £80 000	4.0% of levy
		£2 000 000	
<u>General Fund Cap</u>			
27.5% of levy	=	£550 000	
State (a) basic levy as above	=	£864 000	
Amount for redistribution (ie capping levy)	= 864 000 - 550 000		= £314 000
Applicable tonnage for capping levy	= 330 000 000 + (100 000 000 x 25%)		= 355 000 000
Capping levy	=	$\frac{£314\,000}{355\,000\,000}$	
	=	£0.0008845 per tonne	
State (b)	£0.0008845 x 100 000 000	= £88 450	
States (c)-(j)	£0.0008845 x 230 000 000	= £203 435	
States (k)-(n)	£0.0008845 x (100 000 000 x 25%)	= £22 113	
		313 998	
<u>Overall General Fund Result</u>			
State (a)	27.5% capped amount	= £550 000	27.5% of levy
State (b)	320 000 + 88 450	= £408 450	20.4% of levy
States (c)-(j)	736 000 + 203 435	= £939 435	47.0% of levy
States (k)-(n)	80 000 + 22 113	= £102 113	5.1% of levy
		£1 999 998	