



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
3rd extraordinary session
Agenda item 14

92FUND/A/ES.3/13
20 February 1998
Original: ENGLISH

NOTION OF 'RECEIVER' IN THE 1992 FUND CONVENTION

Note by the Director

Summary:	The 1971 Fund Assembly adopted an interpretation of the notion of the 'receiver' in the 1971 Fund Convention. The 1992 Fund Assembly is invited to consider adopting an interpretation of the concept of the 'receiver' for the purposes of Article 10 of the 1992 Fund Convention.
Action to be taken:	Interpretation of the notion of the 'receiver' to be adopted.

1 Relevant provision of the 1992 Fund Convention

1.1 The text of Article 10.1 of the 1992 Fund Convention is, apart from a minor editorial amendment that is not relevant for the purpose of the matter considered in this document, the same as that of Article 10.1 of the 1971 Fund Convention, and reads as follows:

Annual contributions to the Fund shall be made in respect of each Contracting State by any person who, in the calendar year referred to in Article 12, paragraph 2(a) or (b), has received in total quantities exceeding 150 000 tons:

- (a) in the ports or terminal installations in the territory of that State contributing oil carried by sea to such ports or terminal installations; and

- (b) in any installations situated in the territory of that Contracting State contributing oil which has been carried by sea and discharged in a port or terminal installation of a non-Contracting State, provided that contributing oil shall only be taken into account by virtue of this sub-paragraph on first receipt in a Contracting State after its discharge in that non-Contracting State.

2 1971 Fund's interpretation of the notion of the 'receiver'

2.1 At its 3rd session, the Assembly of the 1971 Fund set up an Intersessional Working Group to consider certain matters relating to the interpretation of Article 10 of the 1971 Fund Convention. The Working Group considered in depth the two principal questions of when the oil has to be considered as having been 'received' and who is the 'receiver' of such oil. The Working Group's conclusions were set out in document FUND/A/ES.1/8, and submitted to the 1st extraordinary session of the 1971 Fund Assembly, held in October 1980.

2.2 The relevant sections of the report of the above-mentioned Working Group are reproduced below:

6 As to the question of which person has to be included in the report as the "receiver" of oil, it emerged from the information available and the discussions in the Working Group that different solutions had been adopted by Contracting States. The solutions were discussed at length by the Working Group on the basis of the preparatory work leading to the adoption of the Fund Convention. In view of the little documentation available on this subject, different views were expressed as to the meaning of Article 10 and the conclusions to be drawn from its wording. The practical implications of the different systems were examined.

7 There was general agreement in the Working Group on the principle that, whatever system may be adopted by Contracting States, each Contracting State had to ensure that all quantities of contributing oil received in that State were covered by the reporting system. The Working Group was of the opinion that within the scope of Article 10 of the Fund Convention, Contracting States should have a certain flexibility to adopt a practical reporting system allowing an effective and easy checking of the figures and taking into account the peculiarities of the oil movement and the local circumstances of a particular country. All members of the Working Group stressed that they were aware of their Governments' obligations under paragraph 2 of Article 13 of the Fund Convention to ensure that any obligation to contribute to the Fund in respect of oil received within the territory of their States is fulfilled. It was generally agreed that, failing payment by persons reported other than the actual receivers, the actual receivers should ultimately be liable for contributions irrespective of whether the persons reported have their place of business or residence in a Contracting State or not.

8 On the basis of the understanding reached, the Working Group came to the conclusion that the existing divergencies in reporting practices would not lead to practical problems; and that, for the time being, it was not necessary to pursue this matter further.

2.3 The 1971 Fund Assembly agreed, at its 1st extraordinary session, that, within the scope of Article 10 of the 1971 Fund Convention, Member States should have a certain flexibility to adopt a practical reporting system allowing an effective and easy checking of the figures and taking into account the peculiarities of the oil movement and the local circumstances of a particular country. The Assembly emphasised that, failing payment by persons reported other than the physical receivers, the physical receivers should ultimately be liable for contributions irrespective of whether the persons reported have their place of business or residence in a Member State or not (document FUND/A/ES.1/13, paragraph 10, pages 7-8).

3 Actions in respect of Dutch storage company

3.1 In 1992 problems arose for the 1971 Fund due to the fact that certain storage companies in the Netherlands, which had been reported by the Dutch Government as having received contributing oil, argued that the interpretation of the notion of 'received' in the 1971 Fund Convention applied by the 1971 Fund was incorrect and that they should not be under any obligation to pay contributions to the 1971 Fund.

3.2 At its 15th session, the 1971 Fund Assembly considered this question and confirmed the position taken at its 1st extraordinary session as to the interpretation of the concept of 'receiver' (document FUND/A.ES/1/13, paragraph 10, pages 7-8). In particular, the Assembly emphasised that, failing payment by persons reported other than the physical receivers, the physical receivers should ultimately be liable for contributions irrespective of whether the persons reported have their place of business or residence in a Member State or not. The Assembly also agreed with the Director that the storage companies in the Netherlands were liable to pay contributions in respect of any quantities actually received by them (document FUND/A.15/28, paragraph 21.2).

3.3 One Dutch storage company, which had been included in the reports of the Government of the Netherlands to the 1971 Fund as a receiver of contributing oil during 1990, appealed to the administrative courts, requesting that it be decided that the company was not liable to pay contributions to the 1971 Fund since it should not be considered as a 'receiver' of oil for the purpose of Article 10 of the 1971 Fund Convention (document FUND/A.15/28, paragraph 21.3). In February 1994 the Administrative Court of Appeal of the Netherlands rejected the appeal lodged by the storage company.

4 Director's considerations

The Assembly of the 1992 Fund has not previously considered the concept of the 'receiver'. In respect of the matter considered in this document, the texts of Article 10.1 of the 1971 and 1992 Fund Conventions are identical. However, the 1992 Fund Assembly may wish to endorse the position taken by the 1971 Fund Assembly with regard to this concept, ie that it is the physical receiver after sea transport who is the person liable to pay contributions to the 1992 Fund.

5 Action to be taken by the Assembly

The Assembly is invited to consider adopting a formal interpretation of the notion of 'receiver' for the purposes of Article 10 of the 1992 Fund Convention.
