



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

ASSEMBLY
4th extraordinary session
Agenda item 3

92FUND/A/ES.4/2
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ASSESSMENT OF CONTRIBUTIONS

Note by the Director

Summary:	Considerable funds will be required during 2000 and early 2001 for the payment of claims in respect of the <i>Erika</i> incident, which occurred after the 1999 contributions were decided. Possible sources of funding are examined.
Action to be taken:	Decide on the levy of contributions in respect of the <i>Erika</i> incident.

1 Consideration by the Assembly at its 4th session

- 1.1 The assessment of 1999 contributions was considered by the 1992 Fund Assembly at its 4th session, held in October 1999 (document 92FUND/A.4/26). The Assembly decided not to levy contributions to the General Fund, although it was decided to increase the working capital from £12 million to £15 million (document 92FUND/A.4/32, paragraphs 29.2 and 28).
- 1.2 The Assembly decided to levy contributions to the *Nakhodka* Major Claims Fund for a total of £13 million, the entire levy to be deferred. The Director was authorised to decide whether to invoice all or part of the deferred levy for payment during the second half of 2000 (document 92FUND/A.4/32, paragraph 29.3).
- 1.3 It was also decided that an amount of £3.7 million should be reimbursed to the contributors to the *Osung N°3* Interim Major Claims Fund on 1 March 2000 and that the balance should be transferred to the General Fund (document 92FUND/A.4/32, paragraph 29.3).
- 1.4 Credit notes in respect of the 1999 contributions were issued by the Secretariat in November 1999.

2 The Erika incident

- 2.1 The *Erika* incident occurred off France on 12 December 1999 (ie after the 4th session of the Assembly in October 1999).
- 2.2 It is clear that the total amount of the claims arising out of the *Erika* incident will considerably exceed the limit of the shipowner's liability applicable to the *Erika* under the 1992 Fund Convention, which is approximately 9.2 million Special Drawing Rights (SDR) (£7.7 million). It is possible that the total amount of the claims arising from the *Erika* incident will reach the 1992 Fund's limit of 135 million SDR (£113.8 million).

3 Level of payments

- 3.1 The Executive Committee considered the *Erika* incident at its 6th session, held in February 2000.
- 3.2 The insurer of the *Erika* agreed to provide funds for interim payments in appropriate cases up to the time of the next Executive Committee session, to be held in April 2000. The shipowner's insurer believed that the limitation amount (approximately £7.7 million) would be sufficient to provide funds for such payments (document 92FUND/EXC.6/5, paragraph 3.14).
- 3.3 The Executive Committee shared the Director's view that it was not yet possible to make a meaningful estimate of the total amount of the established claims and that this applied in particular to the claims in the fishery and tourism sectors. In view of this uncertainty, the Committee decided that the Director's authority to make payments should for the time being be limited to provisional payments under Internal Regulation 7.9, ie provisional payments to victims to mitigate undue financial difficulties not exceeding a total of 6 million SDR (£5.1 million) for any one incident (document 92FUND/EXC.6/5, paragraphs 3.17 and 3.18).
- 3.4 The Director was instructed to collect as much information as possible on the likely level of the claims arising out of this incident, so as to enable the Committee to assess the situation as to the level of payments at its 7th session, to be held in April 2000 (document 92FUND/EXC.6/5, paragraph 3.20).

4 Funds required for the Erika incident

4.1 Overall situation

- 4.1.1 The Director is of the view that, during 2000 and the first few months of 2001, the 1992 Fund will have to make significant payments of compensation and will incur considerable costs. As stated by the Executive Committee, it is not possible at this stage to make a meaningful estimate of the total amount of the claims arising out of this incident. Neither is it possible to make an accurate assessment of the payments which the 1992 Fund will be called upon to make during the coming twelve months, ie before 1 March 2001 when the 2000 contributions decided by the Assembly at its October 2000 session will be due. The Director believes, however, that significant payments will be made during that period. It should be noted that during the first 15 months following the *Nakhodka* incident some £23 million were paid in compensation.
- 4.1.2 As mentioned in paragraph 3.4 above, the Director will be submitting information to the Executive Committee at its 7th session, to be held in April 2000, on the likely total level of claims arising out of the *Erika* incident (document 92FUND/EXC.7/4). In the meantime, however, he estimates that expenditure (both compensation and costs) of some £50 million may have to be made before 1 March 2001. The Director may in an addendum modify this estimate and consequently the proposals set out below if the information available by the time of the Assembly's 4th extraordinary session should warrant it.

4.1.3 It should be noted that of the £50 million expenditure that may have to be made, approximately £7.7 million would be covered by the shipowner's limitation amount (cf paragraph 2.2 above), leaving a balance of some £43 million.

4.2 General Fund

4.2.1 Financial Regulation 7.1(c)(i) provides that the General Fund shall be used for the payment of claims up to 4 million SDR (approximately £3.4 million) per incident (minor claims) (cf Article 12.2(a) of the 1992 Fund Convention).

4.2.2 As indicated in paragraph 1.1, the Assembly decided at its 4th session not to levy any 1999 contributions to the General Fund. However, the Assembly decided at the same session to increase the working capital of the 1992 Fund from £12 million to £15 million (document 92FUND/A.4/32, paragraph 28).

4.2.3 The Director considers that the working capital should be used for the payment of the first £3.4 million in respect of the *Erika* incident and that no adjustment should be made vis-à-vis the Assembly's decision in October 1999 not to levy 1999 contributions to the General Fund.

4.3 Major Claims Fund

4.3.1 Financial Regulation 7.2 provides that a separate Major Claims Fund shall be established for each incident to the extent that the aggregate amount of the payment of claims exceeds 4 million SDR (approximately £3.4 million) per incident (major claims).

4.3.2 The Director takes the view that the 1992 Fund should ensure that sufficient funds are available to allow prompt payments of compensation to be made for claims arising from the *Erika* incident. He therefore considers that £40 million should be available in the *Erika* Major Claims Fund by the early autumn of 2000 for the payment of claims.

5 Source of funds for the *Erika* Major Claims Fund

5.1 Loan from the General Fund

5.1.1 In accordance with Financial Regulation 7.1(c)(iv), it would be possible for a loan to be made to the *Erika* Major Claims Fund from the General Fund to cover expenditure arising from the *Erika* incident over and above 4million SDR (£3.4 million). Such a loan would be repaid to the General Fund when contributions to the *Erika* Major Claims Fund are received.

5.1.2 The 1992 Fund's working capital was increased to £15 million with effect from 1 March 2000. During 2000 £3.4 million of this working capital will be used for payments from the General Fund in respect of the *Erika* incident.

5.1.3 The Director considers that, in order to avoid depleting the working capital and to ensure that funds are available to meet payments in respect of other new incidents, it would not be appropriate for a loan to be made from the General Fund to the *Erika* Major Claims Fund.

5.2 Loan from the *Nakhodka* Major Claims Fund

5.2.1 Financial Regulation 7.2(d) provides that monies in any Major Claims Fund may be used to make loans to other Major Claims Funds, to the extent that sufficient money is not available in the relevant funds. Such a loan would be repaid when contributions to the relevant Major Claims Fund are received.

5.2.2 The present balance on the *Nakhodka* Major Claims Fund is approximately £31 million. It is believed that considerable payments of compensation will be made by the 1992 Fund during 2000 in respect of the *Nakhodka* incident. The Director therefore considers that it would not be

appropriate for a loan to be made from the *Nakhodka* Major Claims Fund to the *Erika* Major Claims Fund.

5.3 Levy of contributions to the *Erika* Major Claims Fund

- 5.3.1 In the light of the position set out in sections 5.1 and 5.2 that it would not be appropriate for loans to be made to an *Erika* Major Claims Fund from the 1992 Fund's present assets, the question arises, however, as to when contributions to an *Erika* Major Claims Fund should be levied. If the Assembly were to follow its usual practice, contributions to the *Erika* Major Claims Fund would not be levied until October 2000 and payments would not be received until 1 March 2001.
- 5.3.2 The Assembly will recall that an exception to this approach was made in 1997 in the *Nakhodka* case, where a major incident occurred a few months after the 1996 contributions were levied. In that instance, instead of waiting until October 1997 to levy contributions to a *Nakhodka* Major Claims Fund payable by 1 February 1998, the Assembly decided at an extraordinary session held in April 1997 to levy contributions to the *Nakhodka* Major Claims Fund payable by 1 September 1997. Furthermore, a corresponding decision was taken by the 1971 Fund Assembly in April 1997 in respect of the *Nakhodka*.
- 5.3.3 The Director considers that, in order to ensure that sufficient funds are available to make significant payments in excess of £3.4 million before 1 March 2001, contributions of £40 million should be levied to the *Erika* Major Claims Fund payable in the second half of 2000, to coincide with the deferred levy, if any, to the *Nakhodka* Major Claims Fund.

6 Director's proposal

The Director proposes that 1999 contributions of £40 million should be levied to the *Erika* Major Claims Fund, for payment by 1 September 2000.

7 Action to be taken by the Assembly

The Assembly is invited, in accordance with Article 12 of the 1992 Fund Convention,

- (a) to take note of the information contained in this document;
 - (b) to decide on an additional assessment of 1999 contributions in respect of the *Erika* Major Claims Fund; and
 - (c) to decide the date of payment of contributions in respect of the *Erika* Major Claims Fund.
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