



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
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Agenda item 3

92FUND/EXC.22/8/1
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INCIDENTS INVOLVING THE 1992 FUND

PRESTIGE

Submitted by Spain

Summary:	This document sets out the measures adopted by the Spanish State to advance full payment for the losses suffered by the victims of the <i>Prestige</i> incident and contains a proposal that the 1992 Fund make advance payments on account with the conditions considered appropriate to facilitate these payments.
Action to be taken:	Information to be noted.

1. There are two features of the *Prestige* disaster that show up the shortcomings of the present IOPC Funds' system. It is a case affecting more than one country, but above all it is an incident causing damage far in excess of the Fund's current resources. At the May session of the Executive Committee the total damage caused in Spain, France and Portugal was put at up to €1 000 million, with the result that a payment level was authorised which, despite being the highest possible, amounted to only 15%.
2. According to the discussions between representatives of the three countries, it seems that the estimate arrived at in May is confirmed as we approach the Executive Committee's October session. It is accordingly to be expected that there will be no possibility of raising the level of payments for quite some time and, if and when this *does* happen, the level will in any case be very low.
3. This being so, the Spanish State has put in place an extraordinary channel whereby it advances compensation for all the damage to those affected in Spain other than the State itself, and specifically to those in the private sector, acquiring their rights through subrogation for the purpose of lodging claims with the 1992 Fund or with any judicial authorities. The advances in question are basically paid out from what the Spanish State receives from the Fund.
4. The interest of the Spanish State in this proposal hinges on the fact that the promptness of the advances depends on how fast it receives the funds due to it. This is also of benefit to the IOPC Fund since it will not be open to criticism for paying too little too late.

5. The sums that the Spanish State receives from the IOPC Fund will be used in full for advancing payments to other affected parties, so that those receiving the advances sought will be those affected parties and not the State itself, which merely serves as the intermediary.
6. This proposal can also be extended to the other affected countries, which could adhere to it regardless of the internal system they decide on to facilitate the rapid and full payment, as appropriate, to their private parties affected.
7. The proposal would be as follows:

That the Executive Committee authorise the advancing "on account", to the Government or Governments of the affected States so choosing, sums that would be estimated by the Director of the IOPC Fund on the basis of the assessment of damage. Such advances may vary over time in accordance with how the situation evolves in the various countries.

The advances would be subject to the following conditions:

1. They are advances "on account". Consequently, should it transpire from the final settlement that a particular State has been advanced more than was in fact due to it, the State in question shall return the corresponding surplus. Such State shall provide the necessary guarantees in that respect.
2. The IOPC Funds shall in any event follow its customary practice when conducting evaluations in accordance with its criteria and, on the basis of such assessments, determine the final settlement and, thereunder, the sums due to all and each of the affected parties.
3. In no case shall 100% of the funds available resources be committed to advances. A sufficient percentage shall be retained to enable the Fund to honour payments to be made to those affected parties making direct claims to it.