



International Oil Pollution
Compensation Funds

Agenda Item 6	IOPC/NOV20/6/1/1	
Date	13 October 2020	
Original	English	
1992 Fund Assembly	92A25	●
1992 Fund Executive Committee	92EC74	
Supplementary Fund Assembly	SA17	●

ELECTION OF MEMBERS OF THE JOINT AUDIT BODY

BALLOT PROCEDURE

Note by the Director

Summary:

As set out in document IOPC/NOV20/6/1, the 1992 Fund Assembly will be invited at the December 2020 sessions to elect six members of the Audit Body.

Since, as a result of the COVID-19 pandemic, the December 2020 sessions will be held remotely, the established practice of the Assembly for the election of members, which in part presupposes in-person meetings, will need to be adapted. The Director has therefore explored three possible options for conducting the ballot procedure, which are described in this document:

- Use of an online voting tool (section 2);
- vote by email (section 3); or
- vote by correspondence (section 4).

Having considered these three options, the Director is of the view that the most practical and secure method to carry out the ballot is through the use of an online voting tool.

The Assembly is invited to decide which ballot procedure to adopt. Following that decision, there will be a need to suspend either Rule 37 or Rule 38 of the Rules of Procedure of the 1992 Fund Assembly, as described in document IOPC/NOV20/1/3/2.

Following the results of the vote, the Chair and the Vice-Chair of the Audit Body will be appointed on the proposal of the Chair of the 1992 Fund Assembly, in consultation with the Chair of the Supplementary Fund Assembly, from the members elected.

Action to be taken: 1992 Fund Assembly

- (a) Take note of the information contained in this document and document IOPC/NOV20/1/3/2;
- (b) consider the voting options set out in sections 2–4 of this document;
- (c) note the Director's considerations and in particular his recommendation in paragraph 5.5;
- (d) decide whether to conduct the ballot procedure for the election of members of the joint Audit Body in December 2020 through:

- (i) use of an online voting tool, specifically that provided by the third-party provider UK Engage (section 2);
- (ii) vote by email (section 3); or
- (iii) vote by correspondence (section 4).

(e) should the decision be taken to conduct the ballot procedure through the use of an online voting tool, decide whether to temporarily suspend Rule 38 of the Rules of Procedure; or

(f) should the decision be taken to conduct the ballot procedure through a vote by email or vote by correspondence, decide whether to temporarily suspend Rule 37 of the Rules of Procedure.

Supplementary Fund Assembly

Note the decision of the 1992 Fund Assembly in respect of the ballot procedure for the election of members of the joint Audit Body in December 2020.

1 Introduction

1.1 The term of office of the present members of the Audit Body will expire at the end of the December 2020 sessions of the governing bodies. As set out in document IOPC/NOV20/6/1, the 1992 Fund Assembly will be invited to elect by secret ballot six members of the Audit Body from the seven candidates nominated by Member States and put forward for election.

Ballot procedure and current established practice

1.2 In previous years, the 1992 Fund Assembly has adopted a ballot procedure for the election of members of the Audit Body which is in accordance with the relevant Rules of Procedure and which has become established practice. This standard ballot procedure is as follows:

- (a) Under Rule 38 of the 1992 Fund Assembly's Rules of Procedure, the Assembly shall, on the proposal of the Chair, appoint two scrutineers from 1992 Fund Member States present at the meeting, who shall scrutinise the votes cast;
- (b) election of members of the Audit Body will be by secret ballot;
- (c) only 1992 Fund Member States whose credentials are in order at the time of the vote will be entitled to participate in the vote;
- (d) before holding the ballot, each Member State present whose credentials are in order shall receive a list of the names of all candidates standing in that ballot in alphabetical order by Member State;
- (e) in each ballot, a Member State whose credentials are in order shall indicate the candidate(s) it supports by ticking the relevant box. If a list indicates support for six or fewer candidates, the vote is valid. If a list indicates support for more than six candidates, the vote is invalid;
- (f) the six candidates who obtain the most votes shall be declared appointed as members of the Audit Body. If two or more candidates obtain the same number of votes for the last seat or seats to be filled, there shall be a further ballot among these candidates only. Should the votes again be divided equally, the Chair shall draw by lot the name of the candidate to be eliminated in the subsequent ballot.

Requirement to adapt current procedure and established practice

- 1.3 However, since, as a result of the COVID-19 pandemic, the December 2020 sessions of the governing bodies will be held remotely, this standard established practice will need to be adapted. The Director, in consultation with the Chairs, has therefore explored three possible options for conducting the ballot procedure during the remote sessions, namely:
- Option 1 - Use of an online voting tool (section 2);
 - Option 2 - vote by email (section 3); or
 - Option 3 - by correspondence (section 4)
- 1.4 Details of the possible ballot procedure for each of the above options are set out in this document together with explanations of any required temporary suspension of the relevant 1992 Fund Assembly's Rules of Procedure or amendments to established practice. The relevant Rules governing voting are Rules 32–40. Further information on these Rules is provided in document IOPC/NOV20/1/3/2. Any necessary temporary suspension or amendment to those Rules in order to facilitate a successful election during the remote sessions is discussed in that document. The 1992 Fund Assembly will be invited to choose one of the options set out in this document to conduct the ballot procedure.
- 1.5 Having considered the three options, the Director, in consultation with the Chairs, is of the view that the most practical, timely and secure method to carry out the ballot is through the use of an online voting tool. The Director's full considerations of each of the options are set out in section 5.
- 1.6 The timing of the ballot and the announcement of the results of the vote will depend on the ballot procedure chosen by the Assembly. Following the results of the vote, the Chair and the Vice-Chair of the Audit Body will be appointed on the proposal of the Chair of the 1992 Fund Assembly, in consultation with the Chair of the Supplementary Fund Assembly, from the members elected.

2 Revised ballot procedure – Option 1: Online voting

Overview

- 2.1 It is possible to carry out the election via an online voting tool. This would enable the vote to take place in an orderly and timely manner, the Secretariat would be able to confirm the results by the end of the December 2020 sessions, and the new Audit Body would be able to commence its term of office immediately.
- 2.2 Having explored various online voting systems, including the voting tool offered by KUDO (the virtual meeting platform being used for the meeting), the Secretariat has identified a third-party provider which offers, in the Secretariat's view, the most suitable online voting service.
- 2.3 UK Engage is one of the UK's leading provider of democratic services, operating in numerous market sectors and specialised in the administration of transparent, impartial and trusted processes including elections, ballots and polls for private and public sector organisations. UK Engage has a number of accreditations and complies with the latest industry standards. These include ISO 9001 (Quality Management System), ISO 27001 (Information Security Management System) and Cyber Essentials (accredited data security, handling and retention). It is also fully GDPR compliant.
- 2.4 UK Engage has worked or is currently carrying out projects for a range of clients, at an international level, such as the International Water Association elections and the Guernsey Parliamentary elections; at government level for the UK Department for Education and many local councils; for non-governmental organisations such as the British Red Cross; and for private companies including banks, insurers, energy providers and others. It also provides ballot printing services to many local government authorities administering Parliamentary, European Parliamentary, local government and mayoral elections, and this

exceeded 9 million ballots in 2019. In addition, the cost of the online voting service is reasonable and well within the budget allocation for the meeting.

- 2.5 UK Engage has therefore been contracted to act as an independent scrutineer and organiser of the vote during the IOPC Funds' governing bodies sessions, in the event that the governing bodies decide to proceed with an online voting procedure to elect members of the Audit Body.

Rules of procedure requiring temporary suspension or amendment

- 2.6 Should the 1992 Fund Assembly decide to proceed with an online voting tool to elect members of the Audit Body, Rule 38 of the Rules of Procedure would need to be temporarily suspended as it will not be possible to appoint two scrutineers from the Member States present to scrutinise the votes cast. Instead, scrutiny is provided via a third-party provider that is not related to the Secretariat. Any necessary temporary suspension or amendment to Rules of Procedure in order to facilitate a successful election during the remote sessions are discussed in detail in document IOPC/NOV20/1/3/2.

Requirement for departure from established practice

- 2.7 The use of the service provided by UK Engage would allow the Assembly to follow established practice with only minimal changes, i.e. the use of an independent third-party scrutineer instead of appointed scrutineers from Member States. This would be in the spirit of retaining the established practices of in-person meetings to the extent that is reasonably possible.

Additional practical information on how the vote would take place

- 2.8 During the online voting process, in accordance with Rule 37 of the Rules of Procedure of the 1992 Fund Assembly, the secrecy of the vote would be maintained at all times, as neither Member State delegations nor the Secretariat would have access to any information related to the vote.
- 2.9 To comply with Rule 33, which states that each Member shall have one vote, only the Heads of delegations of each State present in the remote session would be allowed to vote. A 24-hour period will be given to allow for votes to be cast, which should enable Heads of delegations to cast their vote, even if they are unable to participate at the time of the discussion due to technical difficulties or for other reasons.
- 2.10 The list of all delegates eligible to vote will be established by the Secretariat as soon as possible after the opening of the meeting based on submitted credentials which were found to be in order and verified presence in the remote session. That list, containing the name of the delegate, the Member State represented, and his/her email address will be sent to UK Engage.
- 2.11 Once the Assembly begins to address agenda item 6.1, the online voting platform will open for a 24-hour voting window, and Heads of delegations will receive an email from the following sender (Vote@ukevote.uk) containing a link to the voting platform and a unique one-time-use password.
- 2.12 Heads of delegations will be able to use the link to access the voting platform, which will be branded as an IOPC Funds page in order to provide reassurance that voters are in the right virtual location. There, they will be prompted to enter their unique one-time-use password. They will then have access to the online voting ballot, which will be presented as a list of the seven candidates eligible for election. On the ballot, it will be possible to choose up to six names by ticking the boxes next to each name. Once the vote is submitted via a validation command, an additional prompt will provide a recap of the vote, allowing for changes if required, before a final validation.
- 2.13 All votes will be compiled anonymously via the online voting system, and the result will be made available directly to the Chair shortly after the end of the voting period. That result will comprise the number of votes for each candidate and the total number of voters against the number eligible to vote.

- 2.14 In case of a tied result, it will be possible to promptly organise a second vote among the remaining candidates following the same procedure. In such case, a new email with the link and a new unique one-time-use password will be sent to all eligible voters and the procedure will follow the same steps. However, depending on the remaining time available during the sessions, the voting window might be reduced to a one-hour slot only.
- 2.15 The steps described above would facilitate a secure, confidential and timely voting procedure, which although new to the IOPC Funds, could offer the Assembly a practical solution to carrying out an important election in unusual circumstances, in a remote setting.

3 Proposed revised ballot procedure – Option 2: Vote by email

Overview

- 3.1 It is also possible to carry out the election through Member States submitting their votes by email. In this scenario, the Secretariat would send an email with a ballot paper to all Heads of delegations of Member States who submitted credentials and which were found to be in order for participation in the 25th session of the 1992 Fund Assembly.
- 3.2 This would also enable the vote to take place in an orderly manner, and although more time consuming than the online voting tool, the Secretariat should be able to confirm the results by the end of the December 2020 sessions and the new Audit Body would be able to commence its term of office immediately. However, since the ballot papers will have to be returned by email to the IOPC Funds Secretariat from all delegations, the origin of each paper will be known to at least one member of the Secretariat. The secrecy of the ballot cannot be guaranteed under that procedure, thus requiring Rule 37 to be temporarily suspended.
- 3.3 An additional concern would be the security of sending votes over email/open network and the risk of lost or delayed votes as a result of unrecognised email addresses, spam filters or other such issues. Furthermore, in case of a tied result, it will be difficult in the limited time available for the sessions to organise a second vote among the remaining candidates following the same procedure.

Rules of procedure requiring temporary suspension or amendment

- 3.4 Should the 1992 Fund Assembly decide to proceed with a vote by email to elect members of the Audit Body, Rule 37 of the Rules of Procedure would need to be temporarily suspended as it will not be possible to hold the vote by secret ballot. Any necessary temporary suspension or amendment to Rules of Procedure in order to facilitate a successful election during the remote sessions are discussed in document IOPC/NOV20/1/3/2.

Requirement for departure from established practice

- 3.5 Carrying out the election through Member States submitting their votes by email would require the Assembly to depart from established practice in respect of electing by secret ballot.

Additional practical information on how the vote would take place

- 3.6 To comply with Rule 33 which states that each Member shall have one vote, only the Heads of delegations of each State present will be allowed to vote.
- 3.7 The list of all delegates eligible to vote will be established by the Secretariat as soon as possible after the opening of the meeting based on submitted credentials and verified presence in the remote sessions. That list, containing the name of the delegate, the Member State represented, and his/her email address will be used to send individual emails containing a ballot paper as an attachment.

- 3.8 The ballot paper will need to be filled in by the recipient of the email, saved and sent back to the sender within the deadline indicated in the email.
- 3.9 Under Rule 38 of the 1992 Fund Assembly's Rules of Procedure, the Assembly shall, on the proposal of the Chair, appoint two scrutineers from 1992 Fund Member States present at the meeting, who shall scrutinise the votes cast.
- 3.10 All votes will be compiled by the Secretariat after the end of the voting period and sent to the appointed scrutineers via a link. The scrutineers will confirm the results of the vote to the Chair of the 1992 Fund Assembly, and the results will be announced the following day. That result will comprise the number of votes for each candidate and the total number of voters against the number eligible to vote.
- 3.11 In case of a tied result, it will be difficult in the limited time available for the sessions to organise a second vote among the remaining candidates following the same procedure. In such case, new ballot forms would need to be prepared and recirculated to those delegates eligible to vote and further time would need to be allocated for the Secretariat to compile the results, for the scrutineers to scrutinise the votes cast and for the results to be confirmed.
- 3.12 While this voting option could be undertaken in an orderly manner, it does raise significant concerns with regard to confidentiality, reliability and timeliness.

4 Proposed revised ballot procedure – Option 3: Vote by correspondence

Overview

- 4.1 A further option to carry out the election is for Member States to submit their votes by correspondence. In this scenario, the Secretariat would need to send a letter containing a ballot paper to the London Embassies or High Commissions, or closest official diplomatic representation, of those Member States who submitted credentials which were found to be in order for participation in the 25th session of the 1992 Fund Assembly. For practical reasons, that letter would have to be sent and the whole process would need to be conducted after the 25th session of the Assembly has completed its work in the virtual meeting.
- 4.2 This would also enable the vote to take place in an orderly manner, but it would be far more time consuming than the other two options. The Secretariat would only be able to confirm the results at the end of the correspondence period, which would be a minimum period of four weeks after the virtual meeting, and longer still in the event of a tied result which requires a second round of voting. This option would also delay the adoption of the Record of Decisions for the meeting until the end of January 2021 at the earliest. Under these circumstances, the new Audit Body would not be able to commence its term of office until the Record of Decisions has been adopted.
- 4.3 Furthermore, since the ballot papers will have to be returned to the IOPC Funds Secretariat on official headed documents, the origin of each paper will be known to at least one member of the Secretariat, and the secrecy of the ballot would not be guaranteed.
- 4.4 An additional concern would be the security of sending votes by post and the risk of lost or delayed votes.

Rules of procedure requiring temporary suspension or amendment

- 4.5 Should the 1992 Fund Assembly decide to proceed with a vote by correspondence to elect members of the Audit Body, Rule 37 of the Rules of Procedure would need to be temporarily suspended as it will not be possible to hold the vote by secret ballot. Any necessary temporary suspension or amendment to Rules of Procedure in order to facilitate a successful election during the remote sessions are discussed in document IOPC/NOV20/1/3/2.

Requirement for departure from established practice

- 4.6 Carrying out the election through Member States submitting their votes by correspondence would require the Assembly to depart from established practice in respect of electing by secret ballot.

Additional practical information on how the vote would take place

- 4.7 To comply with Rule 33 which states that each Member shall have one vote, only one ballot paper will be sent to the London embassies or High Commissions, or closest official diplomatic representation, of those Member States who submitted credentials which were found to be in order for participation in the 25th session of the 1992 Fund Assembly.
- 4.8 The list of all delegates eligible to vote will be established by the Secretariat as soon as possible after the opening of the meeting based on submitted credentials and verified presence in the remote session. That list will contain the contact name of the official Member State representative and address of the designated London-based (where possible) Embassy or High Commission.
- 4.9 The letter containing the ballot paper will be posted on the last day of the virtual meeting, i.e. 4 December 2020, it will need to be filled in by the recipient of the letter and returned by post with an accompanying cover letter on official headed paper. The ballot paper should be sent back to the sender within two weeks.
- 4.10 Under Rule 38 of the 1992 Fund Assembly's Rules of Procedure, the Assembly shall, on the proposal of the Chair, appoint two scrutineers from 1992 Fund Member States present at the meeting, who shall scrutinise the votes cast. For practical purposes, the scrutineers would need to be delegates permanently based in London.
- 4.11 All votes will be compiled by the Secretariat after the end of the voting period, after which the scrutineers will be invited to come to the offices of the Secretariat to count the votes. Their presence in the office would be organised in strict observance of the social-distancing rules applicable at the time. The scrutineers will confirm the results of the vote to the Chair of the 1992 Fund Assembly, and the results will be announced in a document submitted by the Chair which will be made available via the Document Services section of the website. That result will comprise the number of votes for each candidate and the total number of voters against the number eligible to vote.
- 4.12 In case of a tied result, a second round of voting by correspondence will be organised. In such case, new ballot forms would need to be prepared and resent to those delegates eligible to vote and further time would need to be allocated for the Secretariat to compile the results, for the scrutineers to scrutinise the votes cast and for the results to be confirmed.
- 4.13 Once a clear result is confirmed, the draft Record of Decisions of the meeting will be published for consideration of the governing bodies. Only after the Record of Decisions has been adopted can the new Audit Body commence its term of office.
- 4.14 While this voting option perhaps provides a more formal, traditional approach, it nevertheless raises the same significant concerns to that of voting by email, in respect of confidentiality and reliability and it presents particular problems in terms of timing and the risk of considerable delays in finalising the result of the election.

5 Director's considerations

- 5.1 As stated in document IOPC/NOV20/1/3/1, the Director is determined that every effort is made for remote sessions to retain established practices of in-person meetings to the extent that it is reasonably possible. Given that it will not be possible to organise a physical voting process for the election of the members of

the joint Audit Body at the December 2020 sessions, the Assembly will have to find a pragmatic solution to enable the election to proceed within a remote session.

- 5.2 The three voting options all provide the possibility for Member States to cast their votes and for the election to take place. The advantages and disadvantages of each option have been described in sections 2, 3 and 4 above in order to assist the Assembly as it makes its assessment.
- 5.3 The Director considers it particularly important that the election should be conducted via secret ballot, that only those Member States whose credentials are in order are able to vote, that they each receive one ballot paper to complete and that the results are reliable, transparent and reflect all votes submitted.
- 5.4 The Director is concerned that organising a vote by email or correspondence would carry a high-security risk both in terms of confidentiality but also in terms of delays, lost votes and possible confusion. To ensure credibility of the vote for those options, he would expect that additional administration/validation procedures would need to be implemented in case ballot papers are shared or copied, and multiple papers are submitted.
- 5.5 Having explored the three options presented, the Director is of the view that a secure online voting platform should be used for the election of the members of the Audit Body on this occasion. In his opinion, this option enables the governing bodies to adopt a ballot procedure which provides a pragmatic solution while being the closest to the spirit of maintaining established practice. It is the simplest, the most secure; it enables the vote to take place by secret ballot and ensures it can be conducted in a timely manner, enabling the results to be confirmed and the Audit Body to commence its term of office immediately.
- 5.6 The Director notes that UK Engage is an experienced and reliable third-party provider of online voting systems. He believes that it will meet the requirements to carry out the ballot procedure. He, therefore, recommends that the 1992 Fund Assembly decide, on this exceptional occasion, to use the online voting tool provided by UK Engage to elect by secret ballot the members of the joint Audit Body. The Director notes that using the online tool would require the votes to be scrutinised by the independent third-party provider rather than two scrutineers appointed from Member States, as stated in Rule 38 of the Rules of Procedure. With this in mind, the Director notes that the Assembly would be required to temporarily suspend Rule 38 to enable the election to proceed by online voting.
- 5.7 Should the Assembly decide to elect the Audit Body through vote by email or correspondence, the Director notes that it would not be possible for the election to take place by secret ballot in accordance with Rule 37 of the Rules of Procedure. With this in mind, the Director notes that the Assembly would be required to temporarily suspend Rule 37 to enable the election to proceed through voting by email or correspondence.

6 Action to be taken

6.1 1992 Fund Assembly

The 1992 Fund Assembly is invited to:

- (a) Take note of the information contained in this document and document IOPC/NOV20/1/3/2;
- (a) consider the voting options set out in sections 2–4 of this document;
- (b) note the Director's considerations and in particular his recommendation in paragraph 5.5;
- (c) decide whether to conduct the ballot procedure for the election of members of the joint Audit Body in December 2020 through:

- (i) use of an online voting tool, specifically that provided by the third-party provider UK Engage (section 2);
 - (ii) vote by email (section 3); or
 - (iii) vote by correspondence (section 4)
- (d) should the decision be taken to conduct the ballot procedure through the use of an online voting tool, decide whether to temporarily suspend Rule 38 of the Rules of Procedure; or
- (e) should the decision be taken to conduct the ballot procedure through a vote by email or vote by correspondence, decide whether to temporarily suspend Rule 37 of the Rules of Procedure.

6.2 Supplementary Fund Assembly

The Supplementary Fund Assembly is invited to:

- (a) note the information contained in this document; and
 - (b) note the decision of the 1992 Fund Assembly in respect of the ballot procedure for the election of members of the joint Audit Body in December 2020.
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