



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS 1971
AND 1992

FONDS INTERNATIONAUX
D'INDEMNISATION DE 1971
ET DE 1992 POUR LES
DOMMAGES DUS À LA
POLLUTION PAR LES
HYDROCARBURES

FONDO INTERNACIONAL
DE INDEMNIZACIÓN DE
DAÑOS DEBIDOS A LA
CONTAMINACIÓN POR
HIDROCARBUROS
DE 1971 Y 1992

IOPC Funds meetings: July 2002 - In Brief

5 July 2002

On 2 and 3 July 2002, the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds) held various meetings. The 1992 Fund held a meeting of its Executive Committee and the 1971 Fund held a meeting of its Administrative Council.

Status of Conventions

The 1992 Fund now has 66 Member States and an additional 14 States have deposited instruments of accession, which will bring the total to 80 by May 2003. The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date.

HNS Convention

The Director of the 1992 Fund has been instructed to prepare for the setting-up of the Fund to be established under the 1996 Convention on liability and compensation for damage in connection with the carriage of hazardous or noxious substances by sea (HNS Convention). The Secretariat has developed a functioning prototype of a computerised system to assist with the identification and reporting of contributing cargo under the HNS Convention.

Various incidents

Aegean Sea (Spain, 1992)

In July 2001, as authorised by the Administrative Council, the Director had made a formal offer to the Spanish Government with a view to reaching a global settlement of all outstanding issues arising out of the *Aegean Sea* incident. This offer, which was made in agreement with the shipowner and his insurer and was accepted in principle by the Spanish Government, is subject to the Spanish Government obtaining the withdrawals by the victims of their legal actions representing at least 90% of the principal of all the losses or damages claimed. The Spanish delegation informed the Administrative Council that so far agreements had been reached with claimants representing 85% of the principal of the loss or damage claimed and that it was expected that 90% would be reached within the next few weeks. The Spanish Government will present to Parliament by the end of September 2002 an Act which will enable the global settlement to be concluded. It is the Spanish Government's intention that the claimants will be compensated before the end of 2002.

Erika (France, 1999)

As at 26 June 2002, 6 206 claims for compensation had been submitted to the Claims Handling Office in Lorient for a total of FFr1 038 million or €158 million (£102 million). 5 599 claims totalling FFr819 million or €25 million (£81 million) had been assessed at a total of FFr427 million or €65 million (£41 million). Assessments had thus been carried out of 90% of the total number of claims received. Payments had been made in respect of 4 389 claims for a total of FFr285 million or €43 million (£28 million).

At its June 2001 session, the Executive Committee had decided to increase the level of the 1992 Fund's payments from 60% to 80% of the loss or damage actually suffered by the respective claimants. In the light of the remaining uncertainties as to the level of admissible claims arising out of the *Erika* incident, the Committee decided that the level of payments should be maintained at 80%, but that the level should be reviewed again at the Committee's next session, to be held in October 2002.

The Executive Committee considered the admissibility of a claim for compensation by BAI Brittany Ferries SA, a French company providing ferry services between England and France (Brittany and Normandy). The claim, which is for FFr69 million or €10.6 million (£6.8 million), relates to alleged losses resulting in a reduction in passenger numbers caused by the *Erika* incident and costs of a marketing campaign to mitigate losses.

The Committee decided that, since there was a link of causation between the alleged losses and the contamination of the French Atlantic coast as a result of the *Erika* incident, the claim by Brittany Ferries was admissible in principle. The Committee authorised the Director to assess the admissible quantum of the claim, taking into account all factors that could have contributed to the losses and, in particular, the extent to which the reduction in passenger numbers fell within the normal fluctuations.

Under the international compensation regime based on the 1992 Civil Liability Convention and the 1992 Fund Convention claimants lose their rights to compensation (their claims are time-barred) unless they take legal action within three years from the date when the individual claimant's loss was incurred. The Committee noted that the Director intended to inform individually during September 2002 all claimants with whom settlements had not been reached by that time, as well as potential claimants via the media and Chamber of Commerce about the provisions in the 1992 Conventions on time bar. The Committee also noted the Director's view that in respect of the *Erika* incident there might be uncertainty as to the date on which the three year time bar period started to run for the individual claimant (ie the day when the respective claimant's loss occurred). In view of this uncertainty the Director will suggest that the claimants should assume that the time bar period commenced on the day of the incident (ie 12 December 1999) in order to avoid any risk of the claims becoming time-barred.