THE EUROPEAN UNION GENERAL DATA PROTECTION REGULATION

Note by the Secretariat

Summary: This document provides an update on the application of the General Data Protection Regulation (GDPR) of the European Union and Directive 2016/680 (Directive) to the IOPC Funds.

On 26 February 2019, the Director received the response from the European Commission to the letter from the IOPC Funds dated 26 September 2018. The Commission indicated, inter alia, that the application of the GDPR and the Directive to the IOPC Funds ‘depends on the privileges and immunities applicable under the Headquarters Agreement’.

Action to be taken: 1992 Fund Assembly and Supplementary Fund Assembly

   Information to be noted.

1 Background information

1.1 The European Union Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016, the General Data Protection Regulation (GDPR) and the accompanying Directive 2016/680 (Directive) apply within the European Union (EU) as of 25 May 2018. The GDPR and the Directive seek to protect fundamental rights and freedoms of natural persons relating to the collection and processing of their personal data, and to allow for the free movement of personal data within the EU.

1.2 The GDPR and the Directive include restrictions on the transfer of personal data to international organisations in order to ensure that the level of protection of natural persons is not undermined.

2 Correspondence between the European Commission and the IOPC Funds

2.1 The Director approached the Representative of the European Commission seeking to clarify the position of the 1992 Fund and the Supplementary Fund in connection with the GDPR and the Directive. In his letter, he requested the European Commission to clarify whether the GDPR and the Directive applied to the IOPC Funds in the same way as it applied to the United Nations (as described in the response of the EU Delegation to the United Nations (NV 2018/56) to the UN Legal Counsel on this same issue).

2.2 In February 2019, the Director received a response from the European Commission stating that the application of the GDPR and the Directive to the IOPC Funds depends on the privileges and immunities applicable under the Headquarters Agreement. Article 6 of the Headquarters Agreement between the United Kingdom Government and the 1992 Fund relates to the IOPC Funds’ data and provides as follows:
Article 6

Archives

The archives of the 1992 Fund shall be inviolable. The term archives includes all records, correspondence, documents, manuscripts, photographs, films, recordings, discs and tapes belonging to or held by the 1992 Fund.

2.3 The Director will discuss this issue with the United Kingdom Government to determine to what extent the GDPR and the Directive apply to the 1992 Fund and the Supplementary Fund or whether they are exempt. The Director will keep the governing bodies informed of the developments relating to this issue.

2.4 The letter from the European Commission dated 26 February 2019 is contained in the Annex to this document.

3 Action to be taken

1992 Fund Assembly and Supplementary Fund Assembly

The 1992 Fund Assembly and Supplementary Fund Assembly are invited to take note of the information.

* * *
Dear Mr Maura,

I write to you in response to your letter and enclosures of 26 September 2018 addressed to the Commission's accredited Representative to the International Maritime Organization.

Having consulted internally, we consider that in your letter you draw the correct conclusions from the letter from the EU Delegation to the United Nation's Legal Counsel. (Ref. NV 2018/56).

As follows from that letter, the application of the Regulation (EU) 2016/679 General Data Protection Regulation (GDPR) and Directive 2016/680 to the IOPC-Fund depends on the privileges and immunities applicable under the Headquarters Agreement.

At the same time, I would like to recall that public and private bodies in the EU Member States remain fully subject to EU data protection rules, including when they deal with international organisations. In this respect, I would like to point out that there is a great degree of continuity with the previous data protection rules, in particular under the GDPR, which updates the rules that were in place for more than 20 years (Data Protection Directive of 1995). This is for example the case for the rules on transfers of personal data to third countries and international organisations, which have not substantially changed. In fact, the new data protection regime introduced new instruments suited for different transfer situations.

The European Commission's services remain open for further clarifications, should you wish to address any additional issues.

Yours sincerely,

Magda Kopczynska