



International Oil Pollution
Compensation Funds

Agenda Item 3	IOPC/MAY23/3/8/1	
Date	16 May 2023	
Original	English	
1992 Fund Assembly	92AES27	
1992 Fund Executive Committee	92EC80	●
Supplementary Fund Assembly	SAES11	

INCIDENTS INVOLVING THE IOPC FUNDS—1992 FUND

PRINCESS EMPRESS

Note by the Secretariat

Objective of document:	To inform the 1992 Fund Executive Committee of the latest developments regarding this incident.
Summary:	<p>As reported in document IOPC/MAY23/3/8, the 1992 Fund has been informed of a new incident, which occurred off the coast of Oriental Mindoro in the Philippines on 28 February 2023.</p> <p>As explained in that document, both the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention are applicable to this incident and since, on the basis of the latest information reported, claims will exceed the limit of liability of the insurer under the 1992 CLC, the 1992 Fund will be called upon to pay compensation.</p>
Recent developments:	<p>Clean up and response operations continue and are very advanced. The shipowner has engaged a salvor to remove the oil from the wreck. The operations are scheduled to commence in June 2023.</p> <p>The Director and a member of the IOPC Funds' Claims Department visited the Philippines in April, where, accompanied by the Philippine Coast Guard they visited the affected area and had meetings with the various authorities.</p> <p>The Secretariat continues to work closely with the ship's insurer, the Shipowners' P&I Club, and has met with the Club at its offices in Singapore. The 1992 Fund and the Club have opened a central Claims Submission Office in Calapan, Oriental Mindoro and a number of temporary offices (collection centres) in different areas, some of which are not easily reachable. The latest claims situation is set out in section 5.</p>
Relevant documents:	IOPC/MAY23/3/8

Action to be taken: 1992 Fund Executive Committee

- (a) decide whether to authorise the Director to make payments in respect of losses arising out of this incident;
- (b) decide whether to authorise the Director to sign an agreement on interim payments with the Shipowners' Club in respect of this incident; and, if so
- (c) decide whether the agreement should apply retrospectively to the amounts agreed by the 1992 Fund and paid by the Club before the signature of the agreement; and
- (d) give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

1 Impact

- 1.1 The pollution damage resulting from the *Princess Empress* incident affected the coasts of Oriental Mindoro to various degrees. The oil also travelled to the Caluya archipelago, which is situated south of Mindoro Island, affecting the islands of Semirara and Liwagao.
- 1.2 Part of the population in the affected area rely on small-scale fisheries-related activities, including subsistence fishing.
- 1.3 Some mangrove areas have been affected by the pollution, particularly on Semirara island.
- 1.4 The tourism sector is also expected to be impacted, since some of the affected areas have a number of tourism-dependent businesses.

2 Response operations

- 2.1 As at 12 May 2023, clean-up and response operations continue and are very advanced. Detailed information about the impact of the incident and the ongoing clean-up operations can be found at the following dedicated website set up by the insurer of the ship, the Shipowners' Mutual Protection and Indemnity Association (Luxembourg) (Shipowners' P&I Club):
www.princessempresinformationcentre.com.
- 2.2 The Philippine Coast Guard (PCG) has been coordinating with the Department of Environment and Natural Resources (DENR), the local government units (LGU), and contractors engaged by the shipowner.
- 2.3 The clean-up operations on shore have relied on workers from the affected area as part of a "cash for work" programme.
- 2.4 Fishing and swimming bans were imposed in the areas affected by the pollution. Some of those bans have been lifted.

Status of the wreck

- 2.5 The shipowner engaged a salvor to survey the sunken wreck to determine its position and condition. The survey, which required the use of a remotely operated vehicle (ROV), found that the wreck had suffered substantial structural damage and that oil was leaking from several points of the wreck. The continuous spill led to oil surfacing and reaching the coasts of the affected area in Eastern Mindoro in variable amounts.

- 2.6 Since the above-mentioned salvor did not have the capability to remove the remaining oil from the wreck, a temporary solution was used. This consisted of placing bags over the holes through which the highest quantity of oil was being spilled. At least one of those bags was reported to be full of oil, which was spilling from the wreck.
- 2.7 An assessment was carried out of the pollution risks posed by the wreck. The conclusion of that assessment reinforced the decision to remove the oil from the wreck. The sensitivity of the environment and economic activities in the potentially affected areas were taken into consideration. In addition, it was noted that the prevailing pattern of the winds in the area of the sinking, change during the summer period, giving rise to the possibility of new areas not yet affected by the pollution, being affected by oil pollution.
- 2.8 The shipowner has engaged a salvor to remove the oil from the wreck. The operations are scheduled to commence in June 2023.

Meetings with the Shipowners' P&I Club

- 2.9 Members of the IOPC Funds' Claims Department travelled to Singapore to meet personnel from the Shipowners' P&I Club during the week of 20 March 2023. They held discussions with the Club and local P&I correspondents from the Philippines, and met remotely with the PCG.
- 2.10 During the week of 17 April 2023, the Director and a member of the IOPC Fund's Claims Department travelled to Singapore to meet the Shipowners' P&I Club and discuss developments concerning this incident.
- 2.11 The Shipowners' Club and the Secretariat hold regular virtual meetings to discuss the handling of claims and other issues relating to the incident.

Visit by the Director to the Philippines

- 2.12 The Director and a member of the IOPC Funds' Claims Department arrived in the Philippines on 21 April 2023. From the time of their arrival in the Philippines and throughout their visit, they were assisted by the PCG. During this trip the Director and the member of the Claims Team visited some of the areas affected by the spill and met the local authorities, staff of the Claims Submission Office and other stakeholders.
- 2.13 In Manila, they attended a case management meeting at the Department of Justice (DOJ), with the Department of Environment and Natural Resources (DENR), the Department of Transportation (DOTR), the Bureau of Fisheries and Aquatic Resource (BFAR) and the PCG. At the meeting, the Director explained the international liability and compensation regime and, in particular, the role of the IOPC Funds.

3 Applicability of the Conventions

- 3.1 As reported in document IOPC/MAY23/3/8, the Philippines is a Party to both the 1992 CLC and the 1992 Fund Convention. The 1992 Fund has therefore been working closely with the insurer of the ship, the Shipowners' P&I Club, and the Government of the Philippines since the incident occurred on 28 February 2023.
- 3.2 Given the latest reported information, claims relating to this incident will exceed the limit of liability of the insurer under the 1992 CLC. The 1992 Fund will therefore be called upon to pay compensation and the 1992 Fund Executive Committee will be invited to authorise the Director to make payments in relation to this incident.
- 3.3 As at 12 May 2023, the shipowner had not set up a limitation fund. Until a limitation fund is set up, the exchange rate applicable to the 1992 CLC limit of SDR 4.51 million will be the same as for the limit applicable under the 1992 Fund Convention of SDR 203 million (which includes the 1992 CLC limit). For

any incident, the exchange rate applicable under the 1992 Fund Convention is the rate on the date that the Director is authorised by the 1992 Fund Executive Committee to make compensation payments in respect of the incident, which is the date at which the Record of Decisions of that meeting is adopted.

- 3.4 For details of the shipowner's insurance and applicability of STOPIA 2006 to this incident, see document IOPC/MAY23/3/8. It is highly likely that claims arising from this incident will reach the STOPIA limit.

4 Investigations into the cause of the incident

According to preliminary information, the *Princess Empress* was refurbished in 2022. There are reports of at least five investigations being conducted by: 1) the Philippine Coast Guard; 2) the Maritime Authority of the Philippines; 3) the Department of Environment and Natural Resources; 4) the Department of Justice, through the National Bureau of Investigation; and 5) the House of Representatives. These investigations appear to be directed principally at determining the cause and extent of the spill and at ascribing fault, including potential criminal responsibility, for the incident.

5 Claims for compensation

Claims Submission Office

- 5.1 The 1992 Fund and the Shipowners' P&I Club, opened a Claims Submission Office (CSO) to facilitate the submission of claims for compensation resulting from the incident. This first central office was opened one month into the incident on 31 March 2023 and it is located in Calapan, Oriental Mindoro.
- 5.2 Given the characteristics and extent of the affected area, in order to give an opportunity to claimants to submit claims, it was considered necessary to open temporary claims submission offices (collection centres) in different areas, some of which are not easily reachable.
- 5.3 Efforts continue to be made in order to reach claimants. The claims submission process involves a short, one to one interview with the claimants, mostly fisherfolk, to help them submit their claim.
- 5.4 Due to the number of claimants and the geographical constraints, the claims submission process is proving time and labour intensive. There are currently 20 personnel working at the different submission centres.

Claims situation

- 5.5 The following table gives a breakdown of the claims submitted as of 12 May 2023.

Claim Category	No	Claimed Amount (USD)	Claimed amount (PHP)	Claimed amount (EUR)	Claimed amount (GBP)
Clean-up and preventive measures	14	17 803 679		1 903 197	64 510
Fisheries	3 457		114 358 810		
Property damage	1		4 000		
Tourism	3		1 254 823		
Total:	3 475	17 803 679	115 617 633 (USD 2 million ^{<1>})	1 903 197	64 510

^{<1>} The rate of exchange applied to this document is that of 3 January 2023, as follows: 1 USD=0.7510 SDR and 1 USD =PHP 55.7900

Clean up and preventive measures

- 5.6 The shipowner has submitted claims totalling USD 17.8 million, EUR 1.9 million and GBP 64 510 in respect of clean up and preventive measures, as per the table below.

	USD	EUR	GBP
Shoreline clean up	1 778 538	1 903 197	
At sea response	1 609 873		
Survey of the wreck	1 331 885		64 510
Oil removal from the wreck	11 751 498		
TOTALS	17 803 679	1 903 197	64 510

- 5.7 The 1992 Fund is examining the claims submitted by the shipowner regarding the costs incurred in respect of the various contractors engaged to carry out response operations at sea and on shore, including the survey of the wreck and the operation to remove the remaining oil from the wreck.

Fisheries

- 5.8 The CSO has so far registered 3 457 claims in the fisheries sector, with a total claimed of PHP 114 358 810 (USD 2 million), as at 12 May 2023. The majority of these claims have little supporting documentation.
- 5.9 The Shipowners' Club and the 1992 Fund, through their international experts, have engaged a team of local fisheries experts to carry out a study of the impact of the spill on the fisheries sector in the affected areas, in order to assess the claims.

Tourism

- 5.10 The CSO has so far received three claims in the tourism sector. More claims from this sector are expected. The tourism experts engaged by the Shipowners' Club and the 1992 Fund have been collecting information in the area in order to be in a position to assess such claims.

Environmental damage

- 5.11 The Shipowners' Club and the 1992 Fund are studying a proposal for a joint environmental impact assessment, together with the Philippine Government and other stakeholders. This assessment would be carried out by well-respected Philippine university experts, in coordination with other experts engaged by the Shipowners' Club and the 1992 Fund.

6 Interim payments

- 6.1 Following the signature in December 2016 of the Agreement on Standard Terms relating to Interim Payments (2016) between the International Group of P&I Associations and the 1992 Fund (see document IOPC/APR17/4/4), the Director recommends that the agreement should be applied to the *Princess Empress* incident. He also proposes that he is authorised to sign an agreement, including the terms of section II of the Agreement on Standard Terms relating to Interim Payments (2016), with the Shipowners' Club in respect of the *Princess Empress* incident.
- 6.2 The Director also recommends that the Agreement is applied retrospectively to the amounts approved by the 1992 Fund and paid by the Club prior to the signature of the Agreement, and that therefore those payments are considered as interim payments of established losses which fall within the provisions of the Agreement.

6.3 For reference, the text of the Agreement is reproduced in the Annex.

7 Director's considerations

- 7.1 Claims for pollution damage will imminently surpass the 1992 CLC limit applicable to the *Princess Empress*. The 1992 Fund will therefore be required to start making payments in the near future. It is highly likely also that claims arising from this incident will reach the STOPIA limit.
- 7.2 The Director therefore proposes that the 1992 Fund Executive Committee authorise him to make payments of compensation in respect of losses arising out of the *Princess Empress* incident.
- 7.3 The Director is grateful for the help provided by the Philippine Government, and in particular the Philippine Coast Guard for their help organising his visit to the Philippines. The Director is also grateful to the local authorities in the affected areas for their help, especially regarding the opening of temporary local claims submission offices.
- 7.4 The Director is equally grateful for the excellent cooperation with the Shipowners' Club and their proactive approach to the incident so far.
- 7.5 The Secretariat will continue to liaise with key stakeholders and to monitor developments closely and will respond in accordance with the terms of the 1992 Fund Convention.

8 Action to be taken

1992 Fund Executive Committee

The Committee is invited to:

- (a) decide whether to authorise the Director to make payments in respect of losses arising out of this incident; and
- (b) decide whether to authorise the Director to sign an agreement on interim payments with the Shipowners' Club in respect of this incident; and, if so
- (c) decide whether the agreement should apply retrospectively to the amounts agreed by the 1992 Fund and paid by the Club before the signature of the agreement; and
- (d) give the Director such instructions in respect of the handling of this incident as it may deem appropriate.

* * *

ANNEX

AGREEMENT ON STANDARD TERMS RELATING TO INTERIM PAYMENTS (2016)

(For use between International Group Clubs and the IOPC Funds)

The Members of the International Group of P&I Clubs (hereinafter referred to as "the Clubs"), whose names and addresses are scheduled hereto, on the one part, and the International Oil Pollution Compensation Fund 1992 ("1992 Fund") and the International Oil Pollution Compensation Supplementary Fund 2003 ("Supplementary Fund"), hereinafter referred to collectively as "the Fund", on the other part, agree as follows:

1. The terms and conditions set out in the appendix to this Agreement shall be known as the 'Standard Terms relating to Interim Payments (2016)', or by the abbreviated name the 'Interim Payment Standard Terms'.
2. These terms are available for use in incidents which involve ships entered in the Clubs and which give rise to claims involving (or potentially involving) the 1992 Fund and, if applicable, the Supplementary Fund, and may be modified by agreement between the parties involved.
3. The Standard Terms shall apply in any particular incident only if expressly so agreed by the Club insuring the ship involved in the incident and by the 1992 Fund (together with the Supplementary Fund, if also potentially involved). In such a case the Standard Terms shall govern the rights and obligations of these parties with respect to interim payments, and they shall take effect subject to any modifications or additions which may be agreed with respect to the incident.

Dated

21 DECEMBER

2016

For the International Group of P&I Clubs

For the International Oil Pollution
Compensation Fund 1992 and the
International Oil Pollution Compensation
Supplementary Fund 2003

Signed



Hugo Wynn-Williams
Chairman

Signed



José Maura
Director

APPENDIX

STANDARD TERMS RELATING TO INTERIM PAYMENTS (2016)

(For use between International Group Clubs and the IOPC Funds)

The objectives, concerns and safeguards summarised in Section I below are set out by way of explanatory background, and regard is to be had to them in interpreting and applying the terms and conditions in Section II.

Section I

The main objective of the terms and conditions set out in Section II is to promote the efficient working of the compensation system; to enable claims exceeding the 1992 Civil Liability Convention (1992 CLC) limit to be paid more speedily than if the 1992 CLC alone applied, and avoid the complexity and delay of a formal distribution of a limitation fund given the availability of supplemental compensation from the IOPC Funds.

The purpose of the arrangements that follow is to make compensation available to the victims of pollution as promptly as possible, whilst ensuring that the total amount paid is ultimately borne by the Club/shipowner and the IOPC Funds in the proportions envisaged by the 1992 CLC and the 1992 Fund Convention.

The main concerns stem from the fact that interim payments are not prescribed by the Conventions and therefore rest on agreement between the paying parties. Where established claims exceed the limit under the 1992 CLC, each claimant is entitled to receive part of their claim under the 1992 CLC and a further proportion from the 1992 Fund. However the practice has been that interim payments are not apportioned between the Club and the Fund but are made by one or the other. These exceed the amounts for which the paying party is liable to the parties paid.

The Club faces the risk of claims being established after it has completed making interim payments as the fact that the Club's payments have reached the 1992 CLC limitation amount does not absolve it of liability for claims established later. It may also have set up a fund in court from which these may be paid. This can result in an imbalance whereby the Club bears a greater proportion of the total claims than envisaged by the Conventions, and the Fund pays one which is correspondingly lower.

The safeguards set out in Section II support the efficient working of the compensation system. Any overpayment is to be rectified by a balancing payment in a reconciliation procedure between the Club and the Fund at the end of the case, ensuring that neither party pays compensation in excess of their limit of liability under the 1992 CLC and Fund Convention.

Section II

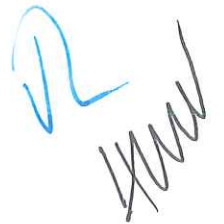
TERMS AND CONDITIONS

1. The following terms and conditions shall apply to any interim payments made in respect of claims for pollution damage in any incident to which the Standard Terms relating to Interim Payments (2016) are made applicable by agreement between the Club insuring the ship involved in the incident and the IOPC Funds. References herein to "the Fund" are references both to the 1992 Fund and, where it is (or might be) involved in an incident, the Supplementary Fund. For these purposes interim payments include any payment of compensation made directly to a claimant, by the Club/shipowner or the Fund, independently of a distribution of the available compensation by the competent court or other authority.
2. Any interim payments by the Club/shipowner in respect of such claims may either be:
 - (a) restricted to the Club/shipowner liability to any claimant under the 1992 CLC; or
 - (b) not so restricted, and set at a level which takes into account the claimant's rights under the international regime as a whole.
3. If the Club/shipowner makes payments restricted in the manner described in paragraph 2(a) above they may do so on such terms as they see fit.
4. If the Club/shipowner makes payments as described in paragraph 2(b) above, and satisfy the conditions in paragraph 6 below, the Fund undertakes to bear responsibility in accordance with paragraph 7 below for payment of claims established thereafter.
5. A claim may be established:
 - (a) by agreement, as a result of the Club/shipowner and the Fund accepting that the claim is admissible for an approved amount; or
 - (b) by a final judgment of the competent court in proceedings against the shipowner and/or the Club and the Fund; or
 - (c) by a final judgment of the competent court in proceedings against the shipowner and/or the Club, provided the Fund is either a party to the proceedings or has been notified of them and is bound by the facts and findings in the judgment in accordance with Article 7.6 of the 1992 Fund Convention (and, if applicable, Article 7.1 of the Supplementary Fund Protocol).
6. The conditions referred to in paragraph 4 above are:
 - (a) Unless otherwise agreed, payments by the Club/shipowners are continued until their total amount, including any sums they may have paid in satisfaction of claim(s) established by final judgment, and/or any sums distributed in respect of such claim(s) from a limitation fund which they may have constituted, is equal to the 1992 CLC limit;
 - (b) save as provided in sub-paragraph (c) below, payments by the Club/shipowner are to be counted for the purposes of this paragraph only if and to the extent that they are made in respect of established claims;

- (c) any payment by the Club/shipowner in respect of a claim which is established under the 1992 CLC, but is not legally enforceable against the Fund, shall count for the purposes of this paragraph only up to the amount which the claimant would be entitled to receive from the distribution of a limitation fund under Article V(4) of the 1992 CLC;
 - (d) payments are made on terms approved by the Fund as to receipt and release;
 - (e) the Fund is consulted as to the level at which payments are made, it being accepted that payments will not count for the purposes of this paragraph to the extent that they exceed the level of payments finally approved by the Fund.
7. If and when the Club/shipowner has fulfilled the above conditions the Fund will bear responsibility thereafter to the Club/shipowner for payment of any established claims. This responsibility:
- (a) is subject to its liability limit, and to any restriction on the level of payments to avoid overpayment;
 - (b) applies to the full amounts for which any such claims are established (subject only to sub-paragraph (a) above);
 - (c) is not limited to the proportion of any such claim for which the Fund could be held (or has been held) legally liable under the 1992 Fund Convention and, if applicable, the Supplementary Fund Protocol;
 - (d) is unaffected by full or partial satisfaction of such a claim by payment from any limitation fund or other security which the Club/shipowner may have constituted, or by any other payment which they may be required to make, in which case the amount so paid shall be taken into account in the reconciliation procedure referred to in paragraph 10 below;
 - (e) is without prejudice to any time bar or other defence on which the Fund may be entitled to rely, including the defences mentioned in Article 8 of the 1992 Fund Convention, Article 8 of the Supplementary Fund Protocol and Article X(1)(a) and (b) of the 1992 CLC, but is unaffected by the mere absence of a monetary order requiring the Fund to pay any specified amount in respect of an established claim;
 - (f) is without prejudice to the Fund's right to dispute the shipowner's right of limitation under the 1992 CLC, and to claim from the shipowner by subrogation any amounts paid by the Fund if conduct barring limitation is established;
 - (g) is otherwise unaffected by any dispute as to the shipowner's right of limitation, save where the right is contested by the Fund before the competent court and its position is upheld by a final judgment.
8. It is recognised that the arrangements in paragraphs 4–7 above differ from those which apply if payments by the Club/shipowner and Fund are limited to the proportions of each individual claim for which they are respectively liable under the 1992 Conventions; that these arrangements do not absolve the Club/shipowner of liability to parties whose claims are established after payments have reached the 1992 CLC limit; and that, if such claims are enforced against the Club/shipowner, various factors may impair their ability to recover by subrogation the excess paid over the 1992 CLC limit.
9. In order to avoid any imbalance which may arise for these or other reasons in the apportionment of total compensation payments, a reconciliation procedure is to be carried out at the end of the case, and any balancing payment is to be made which may be necessary

to ensure that the amounts borne by the Club/shipowner are equal to the 1992 CLC limit (or are reimbursed in the circumstances referred to in paragraph 10 below).

10. For the purposes of these terms and conditions claims for pollution damage may be established, and may be the subject of interim payments, without prejudice to any defence of the Club/shipowner that no liability for the damage attaches to the shipowner by reason of Article III(2) of the 1992 CLC. If such a defence is established (either to the satisfaction of the Fund or by final judgment of the competent court in proceedings to which the Fund is a party), and no defence is available to the Fund under Article 4.2 of the 1992 Fund Convention, the reconciliation procedure referred to above shall be adjusted to reimburse the Club/shipowner any amounts they have paid.
 11. Any claims or disputes arising in connection with these terms and conditions shall be governed by English law and be subject to the exclusive jurisdiction of the English High Court of Justice, to which the Club and the Fund submit for the purposes also of enforcement of any final judgment or order.
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SCHEDULE

- (1) AMERICAN STEAMSHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION, INC. of One Battery Park Plaza, 31st Floor, New York, NY 10004, United States of America;
- (2) ASSURANCEFORENINGEN SKULD (GJENSIDIG) of P.O. Box 1376 Vika, N-0114 Oslo, Norway;
- (3) THE BRITANNIA STEAM SHIP INSURANCE ASSOCIATION LIMITED of Regis House, 45 King William Street, London, EC4R 9AS, England;
- (4) GARD P.&I. (BERMUDA) LIMITED of PO Box HM 3038, Hamilton HMNX, Bermuda;
- (5) THE JAPAN SHIP OWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION of 2-15-14 Nihonbashi - Ningyocho, Chuo-ku, Tokyo 103, Japan;
- (6) THE LONDON STEAM-SHIP OWNERS' MUTUAL INSURANCE ASSOCIATION LIMITED of 50 Leman Street, London, E1 8HQ, England;
- (7) THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED of The Quayside, Newcastle upon Tyne NE1 3DU, England;
- (8) THE SHIPOWNERS' MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG) of 16, Rue Notre-Dame, L-2240 Luxembourg;
- (9) THE STANDARD CLUB LIMITED of Dallas Building, 7 Victoria Street, P.O. Box HM 1743, Hamilton, Bermuda;
- (10) THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION LIMITED of Aquatical House, 39 Bell Lane, London, E1 7LU, England;
- (11) SVERIGES ANGFARTYGS ASSURANS FORENING of Gullbergs Strandgata 6, S-401 22 Goteborg, Sweden;
- (12) THE UNITED KINGDOM MUTUAL STEAM SHIP ASSURANCE ASSOCIATION (BERMUDA) LIMITED of Windsor Place, 18 Queen Street, P.O. Box HM665, Hamilton HMCX, Bermuda; and
- (13) THE WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION (LUXEMBOURG) of 33 Boulevard Prince Henri, Luxembourg.