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INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:	Six thousand nine hundred and ninety claims for compensation have been submitted and 98.4% of the claims have been assessed. Compensation payments totalling €117.5 million (£80.9 million)[<1>] have been made in respect of 5 645 claims. Legal actions against the shipowner, his insurer and the 1992 Fund were taken by 796 claimants. Out-of-court settlements have been reached with 432 of these claimants. The courts have rendered judgements in respect of 79 actions.
Action to be taken:	Information to be noted.

1 Introduction

1.1 This document sets out the general situation in respect of the *Erika* incident which occurred off the coast of Brittany (France) on 12 December 1999 and deals with recent developments.

1.2 As regards the incident, the clean-up operations, the removal of the oil from the wreck of the *Erika* and the impact of the spill, reference is made to the Annual Report 2004 (pages 74-75).

1.3 Since the Executive Committee's February 2006 session, no further developments have taken place in respect of court surveys for evaluation of damage, the investigations into the cause of the incident and various court actions, except as set out below.

[<1>] The French franc was replaced by the Euro on 1 January 2002. Although claims have generally been made in French francs and payments effected up to 31 December 2001 were made in French francs, the amounts in the document have, with a few exceptions, been given in Euros only. The rate of conversion is €1 = FFr6.55957. Conversion of Euros into Pounds sterling has been made on the basis of the rate at 2 May 2006 (€1 = £0.68726), except in the case of claims paid by the 1992 Fund where conversions have been made at the rate of exchange on the date of payment.

2 Shipowner's limitation fund

2.1 At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFr84 247 733 corresponding to €12 843 484 (£8.8 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's liability insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

2.2 In 2002 the limitation fund was transferred from the Commercial Court in Nantes to the Commercial Court in Rennes. In 2006 the limitation fund was again transferred, this time to the Commercial Court in Saint-Brieuc (cf. paragraph 12.6).

3 Maximum amount available for compensation

3.1 The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million SDR per incident, including the sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount shall be converted into national currency on the basis of the value of that currency by reference to the SDR on the date of the decision by the Assembly as to the first date of payment of compensation.

3.2 Applying the principles laid down by the Assembly in the *Nakhodka* case, the Executive Committee decided in February 2000 that the conversion should be made using the rate of the SDR as at 15 February 2000 and instructed the Director to make the necessary calculations (document 92FUND/EXC.6/5, paragraph 3.29). The Director's calculations gave 135 million SDR = FFr1 211 966 811 corresponding to €184 763 149 (£128 million).

4 Undertakings by Total SA and the French Government

4.1 Total SA undertook not to pursue against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer claims relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines and the disposal of oily waste and from a publicity campaign to restore the image of the Atlantic coast if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions, ie 135 million SDR.

4.2 The French Government also undertook not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. However the French Government's claims would rank before any claims by Total SA if funds were available after all other claims had been paid in full.

5 Level of the 1992 Fund's payments

5.1 In view of the uncertainty as to the total amount of claims arising from the *Erika* incident, the Executive Committee decided in July 2000 that the payments by the 1992 Fund should be limited to 50% of the amount of the loss or damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts. The Committee decided in January 2001 to increase the level of the 1992 Fund's payments from 50% to 60% and in June 2001 to 80%.

5.2 In February 2003 the Executive Committee authorised the Director to increase the level of payments to 100% when he considered it safe to do so. After a careful assessment, the Director considered in April 2003 that there was a sufficient safety margin, in spite of the remaining uncertainties as to the total level of admissible claims, and decided to increase the level of payments to 100%.

5.3 At the Executive Committee's October 2003 session the Director stated that although there remained considerable uncertainties as to the total amount of the established claims, this uncertainty had been reduced since April 2003 and that it might therefore be possible in the near future to make payments in respect of the French Government's claim. The Committee authorised the Director to make such payments to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims.

5.4 After having reviewed his earlier assessment of the total level of admissible claims, the Director decided in December 2003 that there was a sufficient margin to enable the 1992 Fund to commence payments to the French State. The 1992 Fund initially paid €10.1 million (£7.0 million) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments made by the Government to claimants in the tourism sector. In October 2004 the 1992 Fund paid a further €6.0 million (£4.2 million) to the French State relating to the French Government's supplementary payments made under a scheme to provide emergency payments to claimants in the fishery, mariculture and salt producing sectors. In December 2005 the 1992 Fund made a payment on account to the French State of €15 million (£10.3 million) towards the costs incurred by the French authorities in the clean-up response. As regards the assessment of this claim reference is made to section 7 below.

5.5 The Director will consider later in 2006, in the light of developments in the court proceedings, whether a further payment can be made to the French State.

6 Claims situation

6.1 As at 30 April 2006, 6 990 claims for compensation had been submitted for a total of €208 million (£143 million). By that date 98.4% of the claims had been assessed. Some 1 050 claims, totalling €24.3 million (£16.7 million), had been rejected.

6.2 Payments of compensation had been made in respect of 5 645 claims for a total of €117.5 million (£80.9 million), out of which Steamship Mutual had paid €12.8 million (£8.8 million) and the 1992 Fund €104.7 million (£68.1 million).

6.3 The following table gives details of the situation in respect of different categories of claims.

Situation as at 30 April 2006					
Category	**Claims submitted**	**Claims assessed**	**Claims rejected**	**Payments made**	
				Number of claims	**Amounts €**
Mariculture and oyster farming	1 007	1 002	89	844	7 758 232
Shellfish gathering	530	527	109	370	889 189
Fishing boats	319	318	29	282	1 099 551
Fish and shellfish processors	51	50	6	43	976 832
Tourism	3 692	3 671	440	3 202	76 404 591
Property damage	711	685	342	330	2 059 060
Clean-up operations	148	143	12	122	21 605 370
Miscellaneous	532	485	30	452	6 716 440
Total	**6 990**	**6 881**	**1 057**	**5 645**	**117 509 265**

7 Assessment of the French Government's claim for clean-up

7.1 At its 32nd session in February 2006, the Executive Committee considered a proposal by the Director as to the approach to be taken to the assessment of the French Government's claim for clean-up (document 92FUND/EXC.32/3, section 7).

7.2 In his analysis the Director mentioned that the total claim by the French State in respect of costs incurred by French authorities in the clean-up response was for €178.8 million (£124 million). The Director referred to the fact that the claim comprised some 250 000 pages of documentation. He made the point that if the claim were to be assessed by the Fund's experts in the normal way, it would take at least two years to complete the work. The Director estimated that the payments to be made to claimants (other than the French Government) would total at least some €120 million (£83.1 million)[<2>]. He stated that since the amount available for compensation for this incident was €184.8 million (£128 million), the amount which would be available for payment to the French Government for clean-up operations would in any event not exceed some €65 million (£45 million). For this reason the Director had sought a more pragmatic way of assessing the French Government's claim up to that amount. The approach proposed by the Director was to carry out a broad assessment of three major components of the claim in order to establish the lowest conceivable admissible amount of the Government's claim, namely the following items:

a) Shore line clean-up costs incurred by the Prefectures and five affected departments in support of the coastal communes for €128 million (£89 million), which had been assessed by the experts engaged by the 1992 Fund and Steamship Mutual at €64 million (£44.3 million);

b) Costs of providing military personnel to assist with beach cleaning for €23 million (£15 million) which had been assessed at €16 million (£11 million);

c) Costs of at-sea operations for €18.4 million (£12.7 million), which had been assessed at €1.0 million (£693,880) with the proviso that a detailed assessment would lead to an increase of that amount to some €9 million (£6.7 million).

7.3 The Executive Committee noted that on the basis of such a broad assessment of the three major components of the claim by the French State, the minimum total admissible amount was some €81 million (£56.15 million), which was well in excess of the maximum amount that was likely to be available (some €65 million) to the French State after all other claims arising from the incident (except that of Total SA) had been settled and paid. The Director expressed the view that, whilst a full assessment of the claim by the French State (including items other than the three main components dealt with in paragraph 7.2 above) would inevitably result in the admissible amount increasing substantially, such a full assessment would not be justified, given the enormous amount of time that would be required to complete the work and the limited amount of money that would be available to pay the claim.

7.4 At its February 2006 the Executive Committee gave its unanimous support to the Director's approach to the assessment of the French State's claim for clean-up costs. The point was made that in view of the size of the claim in relation to the maximum amount of money likely to be available for payment, a full assessment of the claim could not be justified (document 92/FUND/EXC.32/6, paragraph 3.1.11).

7.5 The Executive Committee noted that a broad assessment of the claim by the French State would be without prejudice to the French Government's position in any recourse action against third parties.

<2> That amount includes the payments made to the French State in December 2003 and October 2004 totalling €16.1 million (£11.1 million) which related to the Government's subrogated claims but not the payment on account of €15 million (£10.3 million) made to the State in December 2005 (cf paragraph 5.4 above).

8 Cause of the incident

8.1 Since the *Erika* was registered in Malta, the Malta Maritime Authority conducted a Flag State investigation into this incident. The Authority issued its report in September 2000. An investigation was also carried out by the French Permanent Commission of Enquiry into Accidents at Sea (La Commission permanente d'enquête sur les événements de mer (CPEM)). The report of this investigation was published in December 2000. The conclusions of these investigations are summarised in the Annual Report 2001, pages 118 and 119.

8.2 A criminal investigation into the cause of the incident has been carried out by an examining magistrate in Paris. On 3 February 2006 the magistrate decided that actions should be brought in the Criminal Court in Paris against the master of the *Erika*, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society (Registro Italiano Navale (RINA)) and one of RINA's managers, three companies in the Total Group and one of its senior staff. The trial is expected to take place during the period 30 October – 27 December 2006.

8.3 In June 2003 charges were brought by the examining magistrate against the Malta Maritime Authority and against its Director, but these charges were annulled in June 2004 by the Court of Appeal on the grounds of State immunity.

8.4 At the request of a number of parties, the Commercial Court (Tribunal de Commerce) in Dunkirk appointed experts to investigate the cause of the incident ('expertise judiciaire'). The experts submitted their report in late November 2005. The experts concluded that the fate of the *Erika* was the inevitable consequence of the serious corrosion of the internal structures of the vessel's N°2 ballast tanks, which resulted in their collapse as soon as the vessel encountered sustained heavy seas. The experts stated that the level of corrosion was well beyond acceptable standards for a classification society and contradicted the thickness measurements made of tank internals in 1997 and in particular in 1998, which were carried out by the classification society RINA. The experts stated that once the longitudinal deck stiffeners and the upper parts of the transverse bulkheads in the N°2 ballast tanks had failed in the prevailing sea conditions, there was nothing anyone could have done to influence the fate of the vessel.

8.5 The experts expressed the view that it would not have been possible to detect the level of corrosion when the ship was vetted by Total SA, nor at the time of loading the vessel in Dunkirk prior to the final voyage, and that the vetting procedures of other major oil companies or a survey by a port state would also have not revealed the problem. In contrast, the experts stated that this was not the case with Tevere Shipping Co Ltd (the registered owner), Panship Management and Services Srl (the management company), which monitored the vessel's fifth special survey in Bijela (Croatia) in 1998, and RINA, which undertook the surveys in Bijela and in Augusta in 1999.

8.6 The Director is studying the report by the court experts with the assistance of the 1992 Fund's own experts and will report to the Executive Committee at a later session in 2006.

9 Recourse actions by the 1992 Fund

9.1 Although it is not possible for the 1992 Fund to take a final position as to whether the Fund should take recourse actions to recover the amounts paid by it in compensation and, if so, against which parties, until the criminal proceedings referred to in paragraph 8.2 have been completed, the Executive Committee considered in October 2000 whether the Fund should take such actions as were necessary to prevent its rights becoming time-barred. The Committee decided to authorise the Director to challenge the shipowner's right to limit his liability under the 1992 Civil Liability

Convention and to take recourse actions, as a protective measure before the expiry of the three-year time bar period, against the following parties:

Tevere Shipping Co Ltd (the registered owner of the *Erika*)
Steamship Mutual (P&I insurer of the *Erika*)
Panship Management and Services Srl (manager of the *Erika*)
Selmont International Inc (time charterer of the *Erika*)
TotalFinaElf SA (holding company)
Total Raffinage Distribution SA (shipper)
Total International Ltd (seller of cargo)
Total Transport Corporation (voyage charterer of the *Erika*)
RINA Spa/Registro Italiano Navale (classification society)

9.2 On 11 December 2002 the 1992 Fund brought actions in the Civil Court (Tribunal de Grande Instance) in Lorient against the parties listed above.

9.3 After the Committee's October 2002 session the Director was made aware of the fact that the classification society Bureau Veritas had inspected the *Erika* prior to the transfer of class to RINA. He decided that the 1992 Fund should take recourse action, as a protective measure, against Bureau Veritas, and this action was also brought in the Civil Court in Lorient on 11 December 2002.

9.4 There have been no developments in respect of these actions during 2005 or 2006.

9.5 As mentioned in paragraph 8.2 above, criminal charges have been brought against, *inter alia,* the deputy manager of CROSS and three officers of the French Navy. If they were to be found guilty there might be grounds for the 1992 Fund to take recourse action against the French State, but it is not possible for the 1992 Fund to decide whether there are grounds for such an action until the trial in the criminal proceedings has taken place.

9.6 Under French law the general time bar period in commercial matters is – subject to many exceptions – ten years. In matters involving the liability of public bodies, in order to prevent a claim for compensation becoming time-barred, the French Administration should be notified of such a claim by 31 December of the fourth year after the event that gave rise to a claim, ie in the case of the *Erika* incident by 31 December 2003. The 1992 Fund made such a notification in December 2003 and the French State accepted that this notification had the effect of interrupting the time bar.

10 Claims by salt producers

10.1 Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid-May 2000 as a result of an improvement in sea water quality, and bans which had been imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. A group of independent producers in Guérande tried to resume salt production but were unable to take in sufficient seawater to produce salt. Members of a co-operative who account for some 70% of the salt production in Guérande decided not to produce salt in 2000 on the grounds of protecting market confidence in the product.

10.2 Claims for lost salt production due to delays to the start of the 2000 season caused by the imposed ban on water intake were received from producers (both independent and members of the co-operative) in Guérande and Noirmoutier as well as for losses caused by the late start of the 2001 season. Claims were also presented for costs of restoration of salt ponds in Guérande in 2001.

10.3 The experts engaged by the 1992 Fund and Steamship Mutual had considered that salt production had been possible in Guérande in 2000, but that as a result of the interruption caused by the ban on water intake, the maximum yield would have been 20% of that expected for the year. Interim compensation payments were therefore made to the claimants for the outstanding 80%.

10.4 As regards the salt producers in Noirmoutier, the 1992 Fund and Steamship Mutual had also considered that salt production had been possible in 2000, but that the maximum yield would have been 30% of that expected for the year. Compensation payments were made to the salt producers for the outstanding 70%. Eighty producers accepted the Fund's assessment whereas five pursued claims in court.

10.5 At the request of the 1992 Fund and Steamship Mutual, a court expert was appointed to examine whether it was feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. The court expert presented his report in late December 2004. The court expert concluded that salt production would have been feasible in 2000, but that as a result of the bans that were imposed, the maximum yield would have been between 4% and 11% of normal production.

10.6 In the light of the court expert's findings the 1992 Fund approached claimants with the objective of exploring the possibility of reaching out-of-court settlements. Such settlements have been reached with 22 of the salt producers in Guérande on the basis of a loss of production of 95%. Claims are being pursued in court by 140 salt producers from this area.

11 Time bar

11.1 Under the 1992 Civil Liability Convention rights to compensation from the shipowner and his insurer are extinguished unless legal action is brought within three years of the date when the damage occurred (Article VIII). As regards the 1992 Fund Convention, rights to compensation from the 1992 Fund are extinguished unless the claimant either brings legal action against the Fund within this three-year period or notifies the Fund within that period, in accordance with the formalities required by the law of the court seized, of an action against the shipowner or his insurer (Article 6). Both Conventions also provide that in no case should legal actions be brought after six years from the date of the incident.

11.2 During September 2002 the 1992 Fund wrote individually to all those who had submitted claims to the Claims Handling Office and with whom settlements had not been reached by that time informing them about the time bar issue. In addition, the 1992 Fund organised a series of presentations to the Chambers of Commerce and Industry in Quimper, St Nazaire and La Roche sur Yon to bring the time bar issue to the attention of a wider audience. Advertisements were also placed in the local press.

11.3 A number of claimants did not take legal action against the 1992 Fund before the expiry of the three-year time bar period but only submitted claims against the shipowner and Steamship Mutual in the limitation proceedings. The Fund was formally notified by the liquidator of the limitation fund of theses actions. However, as stated above, in order to prevent such a claim from becoming time barred against the Fund, the claimant must take legal action against the Fund within six years of the date of the incident, ie by 12 December 2005. In early December 2005 the Fund wrote to all these claimants drawing their attention to the six-year time bar period. As a result, an action was brought by a fisherman for a claim of some €50 000 (£34 600) for loss of earnings in 2000.

12 Legal proceedings

12.1 The Conseil Général of Vendée and a number of other public and private bodies brought actions in various courts against the shipowner, Steamship Mutual, companies in the Group Total SA and others requesting that the defendants should be held jointly and severally liable for any claims not

covered by the 1992 Civil Liability Convention. The 1992 Fund requested to be allowed to intervene in the proceedings. So far only procedural hearings have been held.

12.2 The French State brought actions in the Civil Court in Lorient against Tevere Shipping Co Ltd, Panship Management and Services Srl, Steamship Mutual, Total Transport Corporation, Selmont International Inc, the limitation fund referred to in paragraph 2.1 above and the 1992 Fund, claiming €190.5 million (£132 million).

12.3 Four companies in the Group Total SA took legal actions in the Commercial Court in Rennes against the shipowner, Steamship Mutual, the 1992 Fund and others claiming €143 million (£99 million).

12.4 Steamship Mutual brought action in the Commercial Court in Rennes against the 1992 Fund, requesting the Court, *inter alia,* to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €12 843 484 (£8.6 million) corresponding to the limitation amount applicable to the shipowner, in agreement with the 1992 Fund and its Executive Committee. Steamship Mutual further requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention. Steamship Mutual also requested the Court to order the 1992 Fund to reimburse it any amount the shipowner's insurer will have paid in excess of the limitation amount.

12.5 Claims totalling €497 million (£344 million) were lodged against the shipowner's limitation fund constituted by Steamship Mutual. This amount includes the claims by the French Government and Total SA. However, most of these claims, other than those of the French Government and Total SA, have been settled and it appears therefore that these claims should be withdrawn against the limitation fund to the extent that they relate to the same loss or damage. The 1992 Fund received from the liquidator of the limitation fund formal notifications of the claims lodged against that fund.

12.6 Due to some disturbances by an individual during all hearings in the Commercial Court in Rennes relating to the *Erika* incident, all judges of that Court decided in January 2006 that they would no longer deal with any proceedings concerning that incident. This decision applies to ten actions involving 63 claimants, including the actions mentioned in paragraphs 12.3 and 12.4 above, and the proceedings relating to the shipowner's limitation fund The President of the Court of Appeal in Rennes decided on 12 January 2006 to transfer the actions and proceedings from the Commercial Court in Rennes to the Commercial Court in Saint-Brieuc. The Court in Saint-Brieuc accepted to deal with these actions and proceedings.

12.7 Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 30 April 2006 out-of-court settlements had been reached with 432 of these claimants. The courts had rendered judgements in respect of 79 claims. Actions by 285 claimants (including 145 salt producers) were pending. The total amount claimed in the pending actions, excluding the claims by the French State and Total SA, was €62 million (£42.6 million).

12.8 The 1992 Fund will continue the discussions with the claimants whose claims are not time-barred for the purpose of arriving at out-of-court settlements if appropriate.

13 Court judgments in respect of claims against the 1992 Fund [<3>]

13.1 The document summarises ten judgements in respect of claims against the 1992 Fund which have been made public since the Executive Committee's February 2006 session.

[<3>] The judgments were rendered also against the shipowner and Steamship Mutual. In order not to burden the text in paragraphs 13.2.1-13.6.4, reference is made only to the 1992 Fund.

13.2 Commercial Court in Lorient

Wholesaler of beach toys and camping equipment

13.2.1 A wholesaler of beach toys and camping equipment in Briec (Finistère) had submitted a claim for €62 000 (£43 000) relating to losses allegedly suffered as a result of the *Erika* incident. The Fund had rejected the claim on the grounds that there had not been a sufficient link of causation between the alleged loss and the contamination resulting from the *Erika* incident.

13.2.2 In respect of this claim it should be noted that the 1992 Fund Assembly had previously decided that a distinction should be made between (a) claimants who sold goods or services directly to tourists (for example the owners of hotels, camping sites, bars and restaurants) and whose businesses were directly affected by a reduction in visitors to the area affected by an oil spill; and (b) those who provided goods or services to other businesses in the tourist industry but not directly to tourists (for example wholesalers, manufacturers of souvenirs and postcards and hotel launderers). It was considered that in the case of category (b) there was not a sufficiently close link of causation between the contamination and any losses suffered by claimants. Claims of this type therefore normally do not qualify for compensation in principle.

13.2.3 In a judgement rendered in February 2006 the Court stated that it was not bound by the Fund's criteria for admissibility and that it was for the Court to interpret the concept of 'pollution damage' in the 1992 Conventions and to apply it in each individual case by determining whether there was a sufficient link of causation between the event and the damage. The Court rejected the claim on the grounds that the claimant had not shown that he had suffered a loss that could with certainty be linked to the *Erika* incident since the claimant sold his products over a much wider area than that affected by the incident.

13.2.4 When this document was issued, the claimant had not appealed against the judgement.

Oyster producer

13.2.5 An oyster producer based in Quiberon had submitted a claim for €76 724 (£52 700) relating to loss of income in January 2000 and the loss of an order allegedly as a result of the *Erika* incident. The 1992 Fund had assessed the loss of income in 2000 at €18 167 (£12 600) but had rejected the claim for the lost order. However, since the claimant had received a payment totalling €13 167 (£9 000) under the French Government's supplementary payment scheme (cf. paragraph 5.4), the 1992 Fund had offered the claimant the balance of €5 000 (£3 436), which the claimant had not accepted.

13.2.6 In a judgement rendered in March 2006 the Court, after making a similar statement that it was not bound by the Fund's criteria for admissibility, rejected the claim on the grounds that even if there had been a loss of an order, the claimant had not shown that he had suffered any financial loss as a consequence thereof. The Court agreed with the 1992 Fund's assessment of the claim and ordered the Fund to pay the claimant the offered amount of €5 000 (£3 436) plus legal interest calculated from the date of the judgement.

13.2.7 When this document was issued, the claimant had not appealed against the judgement.

Bar hotel restaurant

13.2.8 The owner of a bar and hotel restaurant had submitted a claim for €10 155 (£7 040) for loss of income allegedly suffered in 2000 as a result of the *Erika* incident. The 1992 Fund had rejected the claim for the losses suffered by the bar and restaurant but had accepted the loss in the hotel business which was assessed at €2 248 (£1 560). A payment of €1 528 (£950) relating to 80% of the assessed amount was made to the claimant by the 1992 Fund.

13.2.9 In a judgement rendered in March 2006, the Court, after making a similar statement that it was not bound by the Fund's criteria for admissibility, rejected the claim for the restaurant and bar businesses, since these businesses had started to decline two years before the incident. The Court agreed with the 1992 Fund's assessment of the claim in respect of the hotel business and ordered the Fund to pay the claimant the outstanding amount, namely €720 (£500).

13.2.10 When this document was issued, the claimant had not appealed against the judgement.

Food and drinks wholesaler

13.2.11 A food and drinks wholesaler had submitted a claim for €26 050 (£18 100) relating to loss of income allegedly suffered during the period May to August 2000 as a result of the *Erika* incident. The 1992 Fund had rejected the claim on the grounds that there had not been a sufficient link of causation between the alleged loss and the contamination resulting from the incident.

13.2.12 In a judgement rendered in March 2006 the Court, after making a similar statement on the Fund's criteria for admissibility, rejected the claim on the grounds that the claimant had not shown that he had suffered a loss, since the claimant's turnover in 2000 had increased by 11.51% and it had not been established that the turnover could have been higher had the *Erika* incident not occurred.

13.2.13 When this document was issued, the claimant had not appealed against the judgement.

Frozen food wholesaler

13.2.14 A frozen food wholesaler had submitted a claim for €280 506 (£194 000) relating to loss of income allegedly suffered in 2000 as a result of the *Erika* incident. The 1992 Fund had rejected the claim on the grounds that there had not been a sufficient link of causation between the alleged loss and the contamination resulting from the *Erika* incident.

13.2.15 In a judgement rendered in March 2006 the Court, after making a similar statement on the Fund's criteria for admissibility, stated that the relevant facts had not been established and appointed a court expert to determine the amount of the losses and whether the losses resulted directly from the *Erika* incident.

Clothes retailer

13.2.16 A clothes retailer with shops in Vannes and Quiberon in South Brittany had submitted a claim for €76 580 (£53 000) relating to loss of income allegedly suffered in 2000 as a result of the *Erika* incident. The claimant had also submitted a claim for €406 450 (£280 000) relating to losses in 2001 and 2002. The 1992 Fund had assessed the losses for 2000 at €61 622 (£42 700) but had rejected the claim for losses in 2001 and 2002 on the grounds that there had not been a sufficient link of causation between the loss and the contamination.

13.2.17 In a judgement rendered in March 2006 the Court, after making a similar statement on the Fund's criteria for admissibility, held that, even if the oil pollution had been removed in South Brittany by the end of the summer 2000, which had not been established, this would not exonerate the 1992 Fund vis-à-vis the claimant if it was proved that he had suffered a loss directly caused by the pollution which had taken place in 1999. The Court rejected the claim on the grounds that the claimant had not proved that he had suffered any loss as a result of the *Erika* incident other than the loss already compensated by the Fund.

13.2.18 When this document was issued, the claimant had not appealed against the judgement.

13.3 Commercial Court in Quimper

Fishermen

13.3.1 A fisherman based in Camaret-sur-Mer, North Brittany, had submitted a claim for €130 104 (£89 400) relating to loss of income allegedly suffered as a result of the *Erika* incident. The 1992 Fund had rejected the claim since the port where the claimant's boat was based had not been affected by the pollution and the fishing grounds normally used by the claimant were located at least some 30 nautical miles west of the area affected by the pollution. The 1992 Fund had also argued that the fishing in December 1999 had been cancelled as a result of bad weather and that the fishing in February 2000 had not been cancelled as a result of the pollution.

13.3.2 In a judgement rendered in March 2006 the Court rejected the claim on the grounds that the claimant had not proved that there was a link of causation between the alleged losses and the contamination caused by the *Erika* incident.

13.3.3 When this document was issued, the claimant had not appealed against the judgement.

Cider producer

13.3.4 A company producing and selling cider, both as a wholesaler and as a retailer, based in Plomelin in South Finistère, had submitted a claim for €84 487 (£58 500) relating to loss of income allegedly suffered in 2000 as a result of the *Erika* incident. The 1992 Fund had assessed the losses of the claimant's retail business at €7 239 (£5 000), but had rejected the claim for loss in the wholesale business since claims of this type normally did not qualify for compensation in principle.

13.3.5 In a judgement rendered in March 2006 the Court made a similar statement on the Fund's criteria for admissibility. The Court stated that although the claimant had argued that the reduction in turnover was caused by the pollution, he had not presented any evidence concerning the regional distribution of the sales and it had not been established that the wholesale business took place in the area affected by the pollution. The Court rejected the claim on the grounds that the claimant had not proved that there had been a link of causation between the alleged losses and the contamination caused by the *Erika* incident.

13.3.6 When this document was issued, the claimant had not appealed against the judgement.

13.4 Commercial Court in La Roche-sur-Yon

Camping site

13.4.1 A company managing a camping site based in Saint-Jean-de-Monts had submitted a claim for €76 641 (£53 000) relating to loss of income allegedly suffered in 2000 as a result of the *Erika* incident. The 1992 Fund had assessed the losses in €16 083 (£11 000) and this amount was paid to the claimant.

13.4.2 In a judgement rendered in April 2006 the Court stated that the losses suffered by the claimant had been assessed following the criteria established by the Fund summarised in a Manual. The Court stated that the criteria could not be considered to agreements between the parties in the sense of Article 31.3 of the Vienna Convention on the Law of Treaties and that the Resolution of the 1992 Fund's Administrative Council of May 2003 according to which ‘'the Courts of the States Parties to the 1992 Conventions should take into account the decisions made by the governing bodies of the Fund…' did not have a binding effect but corresponded to an expression of wish. In the judgement the Court stated that it was for the competent court to interpret the concept of 'pollution damage' and to apply it to the particular case in order to verify whether there was a sufficient link of causation between the event and the damage and to determine the extent of that damage. However, the Court agreed with the Fund's assessment and rejected the claim for further compensation.

13.4.3 When this document was issued, the claimant had not appealed against the judgement.

Camping site

13.4.4 The operator of a camping site in Vendée claimed compensation for €92 007 (£63 200) relating to loss of income allegedly suffered due to a reduction in turnover resulting from the *Erika* incident in 2000 and 2001, out of which €44 925 (£30 900) related to losses in 2000 and €47 082 (£32 400) to losses in 2001. The 1992 Fund had assessed the losses for 2000 at €11 282 (£7 800) and had paid that amount to the claimant, but had rejected the claim for losses in 2001, on the grounds that there had not been a sufficient link of causation between the alleged losses and the contamination caused by the *Erika* incident.

13.4.5 The Court accepted the Fund's assessment of the losses in 2000 and rejected the claim for losses in 2001 on the grounds that it had not been shown that there was a sufficient link of causation between the alleged losses in 2001 and the contamination resulting from the *Erika* incident.

13.4.6 When this document was issued, the claimant had not appealed against the judgement.

14 Action to be taken by the Executive Committee

The Executive Committee is invited:

(a) to take note of the information contained in this document; and

(b) to give the Director such instructions in respect of the handling of this incident as it may deem appropriate.