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INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

| | |
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| Summary: | <p>Six thousand nine hundred and ninety claims for compensation have been submitted and 98.4% of the claims have been assessed. Compensation payments totalling €17.8 million (£79.8 million)^{<1>} have been made in respect of 5 656 claims.</p> <p>Legal actions against the shipowner, his insurer and the 1992 Fund were taken by 796 claimants. Out-of-court settlements have been reached with 438 of these claimants. The courts have rendered judgements in respect of 86 actions.</p> <p>Seven judgements have been rendered by the French Courts since the Executive Committee's May 2006 Session. A summary of these judgements is given.</p> |
| 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 2005 (pages 73-74).
- 1.3 As regard the investigations into the cause of the incident and recourse actions by the 1992 Fund reference is made to document 92FUND/EXC.34/6/Add 1.

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*

^{<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 13 September 2006 (€1 = £0.6777), 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.

at FFfr84 247 733 corresponding to €12 843 484 (£8.7 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.

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 was 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 = FFfr1 211 966 811 corresponding to €184 763 149 (£125 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.
- 5.5 Having again revised the assessment of the total level of admissible claims in September 2006, the Director considered that there was a sufficient margin to make a further payment of €10 million (£6.8 million) to the French State towards the costs incurred by the French authorities in the clean-up response. This payment will be effected by the end of September 2006.

6 Claims situation

- 6.1 As at 15 September 2006, 6 997 claims for compensation had been submitted for a total of €387 million (£262 million), which included a claim for a total of €179 million (£121 million) by the French State for clean-up operations carried out as a result of the incident. By that date 98.4% of the claims had been assessed. Some 1 060 claims, totalling €24 million (£16.2 million), had been rejected.
- 6.2 Payments of compensation had been made in respect of 5 656 claims for a total of €117.8 million (£80 million), out of which Steamship Mutual had paid €2.8 million (£8.8 million) and the 1992 Fund €105 million (£71.2 million).
- 6.3 The following table gives details of the situation in respect of different categories of claims.

| Situation as at 15 September 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 | 3 205 | 76 405 187 |
| Property damage | 712 | 686 | 342 | 331 | 2 067 545 |
| Clean-up operations | 149 | 143 | 12 | 123 | 21 695 043 |
| Miscellaneous | 537 | 490 | 30 | 458 | 6 907 815 |
| Total | 6 997 | 6 887 | 1 058 | 5 656 | 117 799 395 |

7 Claims by salt producers

- 7.1 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 in late 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.
- 7.2 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.
- 7.3 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%.
- 7.4 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.
- 7.5 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.
- 7.6 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 still being pursued in court by 140 salt producers from this area.

8 Legal proceedings

- 8.1 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.
- 8.2 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).

- 8.3 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 (£97 million).
- 8.4 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 (£8.7 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.
- 8.5 Claims totalling €497 million (£337 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.
- 8.6 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 8.3 and 8.4 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.
- 8.7 Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 796 claimants. By 15 September 2006 out-of-court settlements had been reached with 438 of these claimants and the courts had rendered judgements in respect of 86 claims. Actions by 272 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 €60 million (£41 million).
- 8.8 The 1992 Fund will continue to hold discussions with the claimants whose claims are not time-barred for the purpose of arriving at out-of-court settlements if appropriate.

9 Court judgements in respect of claims against the 1992 Fund^{<2>}

- 9.1 Seven judgements in respect of claims against the 1992 Fund which have been made public since the Executive Committee's May 2006 session are summarised below.

9.2 Commercial Court in Lorient

Property letting

- 9.2.1 An estate agent based in Quiberon and Le Palais submitted a claim for €60 678 (£41 100) for losses suffered in its commercial activities in 2000, namely letting and selling property to tourists,

^{<2>} The judgements were rendered also against the shipowner and Steamship Mutual. In order not to burden the text in paragraphs 9.1-9.5.15 reference is made only to the 1992 Fund.

allegedly as a consequence of the reduction in the number of tourists visiting the affected area due to the *Erika* incident. The 1992 Fund had compensated the claimant for its letting activity at €6 084 (£10 900), and had rejected the claim for selling property on the ground that there was no link of causation between the loss allegedly suffered and the contamination resulting from the *Erika* incident.

9.2.2 In a judgement rendered in May 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 held that the claimant had not provided any evidence to justify the payment of additional compensation from the Fund, and considered that the Fund had made a correct assessment of the claim at €6 084 (£10 900).

9.2.3 The claimant did not appeal against the judgement.

9.3 Commercial Court in Quimper

Fish wholesaler

9.3.1 A fish wholesaler based in Concarneau submitted a claim for €11 752 (£75 700) for losses in commercial activity in 2000, allegedly as a consequence of the *Erika* incident. The 1992 Fund had assessed the claim at €2 777 (£22 200) and paid this amount in compensation to the claimant.

9.3.2 In a judgement rendered in June 2006, the Court agreed with the 1992 Fund's assessment but stated 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 held that the claimant had not provided evidence of a loss in excess of that already compensated by the Fund.

9.3.3 The claimant did not appeal against the judgement.

9.4 Commercial Court in Saintes

Manufacturer of fishing equipment

9.4.1 The criteria for the admissibility of claims for pure economic loss adopted by the 1992 Fund's governing bodies, ie economic loss suffered by a person whose property has not been damaged, could be summarised as follows.

Claims for pure economic loss are admissible only if they are for loss or damage caused by contamination. The starting point is the pollution, not the incident itself.

To qualify for compensation for pure economic loss, there must be a sufficiently close link of causation between the contamination and the loss or damage sustained by the claimant. A claim is not admissible for the *sole* reason that the loss or damage would not have occurred had the oil spill not happened. When considering whether the criterion of reasonable proximity is fulfilled, the following elements are taken into account:

- (a) the geographic proximity between the claimant's activity and the contamination;
- (b) the degree to which a claimant was economically dependent on an affected resource;
- (c) the extent to which a claimant had alternative sources of supply or business opportunities; and

- (d) the extent to which a claimant's business formed an integral part of the economic activity within the area affected by the spill.
- 9.4.2 At its 9th session, held in October 2000, the Executive Committee considered a claim for €24 000 (£152 000) by a manufacturer of nets and other fishing equipment for reduction in sales. The Committee noted that the claimant's business was located in Brie-sous-Montagne some 100 kilometres south of the area affected by the oil spill and that a considerable part of his sales were to businesses which in their turn sold nets and other fishing equipment to fishermen operating in the area affected by the oil spill. It also noted that the claimant had maintained that his customers had reduced their purchases during the period following the *Erika* incident.
- 9.4.3 The Committee considered that, since the claimant's activity was located some distance outside the area affected by the oil spill, his business could not be considered an integral part of the economic activity in the affected area and that there was therefore not a reasonable degree of proximity between the alleged losses and the contamination. The Committee also took the view that there had not been any general ban imposed on fishing which could have caused a reduction in the sales of the claimant's products. The Committee therefore decided that the claim should be rejected (document 92FUND/EXC.9.12, paragraphs 3.6.35 and 3.6.36).
- 9.4.4 Following the Executive Committee's decision, the 1992 Fund rejected the claim. The claimant pursued the claim before the Commercial Court in Saintes for an amount of €184 000 (£124 700) of which €19 000 (£80 700) for loss of income and €65 000 (£44 000) for financial losses as a result of the reduction of cash flow.
- 9.4.5 In a judgement rendered in June 2006 the Court stated that the criteria for admissibility of claims developed by the Fund did not have a binding effect on national Courts 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 held that the claim satisfied the Fund's criteria for admissibility of claims since the great majority of the claimant's clients were based in the affected area that the sale of fishing nets represented a substantial part of his turnover, that the claimant did not have other sources of supply or business opportunities, that the claimant's business formed an integral part of the economic activity within the area affected and that the claimant had only included in its claim the activities which had a direct geographical link with the area affected by the spill.
- 9.4.6 On the basis of the report of a court expert, the Court accepted the part of the claim relating to loss of income for the amount claimed (ie €19 000) and assessed the part of the claim relating to financial loss at €32 000 (£21 700). The Fund was therefore ordered to pay €51 000 (£102 300). The Court also ordered the provisional execution of the judgement. Following a request by the claimant the Fund paid the amount awarded by the court.
- 9.4.7 Having examined the judgement, the Director, considers that although the Court took a position different from that of the Fund as regards admissibility, the Court reached its decision after having applied the criteria for admissibility of claims adopted by the Fund and made a reasonable evaluation of the evidence provided by the claimant. The Director recommends therefore that the Executive Committee should instruct him not to appeal against the judgement.
- 9.5 Court of Appeal in Rennes
- A fisherman and a claimants' union*
- 9.5.1 At its 33rd session, held in May 2006, the Committee recalled that a fisherman, having accepted the assessment of his claim by the 1992 Fund and received two provisional payments and signed full and final releases, had subsequently brought legal action against the Fund arguing that the agreement reached with the Fund was not valid and had claimed additional compensation. The Committee also recalled that a claimants' union had joined in these legal proceedings supporting the

claimant, who was one of its members, and that although the union had not made a specific claim for loss or damage caused by the *Erika*, it had claimed a symbolic amount of €1 (£0.70) for non-defined damages.

- 9.5.2 The Committee recalled that in a judgement in March 2005 the Commercial Court in Rennes had rejected the claim by the individual claimant on the grounds that, having signed a full and final receipt and release, the claimant had accepted the terms of the proposed agreement and had entered into a valid settlement according to French law. It was further recalled that the Court had found that the claimants' union had not suffered any damage falling within the scope of the 1992 Civil Liability and Fund Conventions and had stated that the actions of the individual claimant and the union were excessive and ordered them to pay a symbolic amount of €1 each to the shipowner, Steamship Mutual and the Fund.
- 9.5.3 The Committee noted that the individual claimant and the union had appealed against the judgement and that in May 2006 the Court of Appeal in Rennes had confirmed the judgement of the Commercial Court with regard to the individual claimant on the grounds that, having signed a full and final receipt and release agreement, the claimant had lost his right to sue the 1992 Fund. It was further noted that the Court had considered that the 1992 Fund, having provided compensation for pollution damage caused by the *Erika* on an amicable basis, had avoided the need for the claimant to be involved in a lengthy and expensive litigation and had also acted according to the requirements of French law. It was noted that the Court had also considered that if the claimant had agreed to the amicable settlement at the time, it was because he had found it convenient to do so, and that his opposition two years later was to be considered too late and invalid.
- 9.5.4 The Committee noted that, as regards the fishermen's union, the Court had stated that the legal action by the union was admissible since any trade union could be party to legal proceedings to defend the general interests of the members of the profession it represented. It was further noted that the Court had recognised the right of the union to question in general terms the processes and modalities of compensation of fishermen and others deriving their income from the sea, but that it should not deal with individual losses suffered by the victims of the pollution. It was noted, however, that the Court had dismissed the union's claim since it was not well founded.
- 9.5.5 In September 2006 the 1992 Fund was notified that the fisherman and the claimants' union had appealed against the Court of Appeal judgement before the Supreme Court (Cour de Cassation).

Owner of property located on the beach

- 9.5.6 The owner of a property located directly on the beach in the Department of Loire Atlantique had sought compensation for damage to his property in the amount of €28 394 (£19 200). The claim had been assessed provisionally by the 1992 Fund at €19 141 (£13 000). The 1992 Fund made an interim payment and the claimant signed an interim receipt and release document. Subsequently, the Fund obtained additional information which resulted in its experts reassessing the claim at €11 980 (£8 100). The claimant did not agree with the reassessment and brought proceedings against the Fund claiming €28 210 (£19 100). In a judgement rendered in December 2004 the Commercial Court in Saint-Nazaire assessed the claim at €15 847 (£10 750). The claimant appealed against the judgement.
- 9.5.7 In a judgement rendered in June 2006 the Court of Appeal in Rennes ordered the 1992 Fund to pay the claimant €19 141 (£13 000). The Court stated that although the 1992 Fund's criteria were not binding on national courts, the Court could use them as a source of inspiration. The Court held that the claimant had agreed with the Fund on an interim compensation and had signed a interim receipt and release agreement and that this agreement, under French law, was a settlement between the parties. The Court of Appeal rejected the items which were not covered by the receipt and release.
- 9.5.8 When this document was issued, the claimant had not appealed against the judgement.

Wholesaler supplying bottled drinks

- 9.5.9 A wholesale business operating from various locations in Brittany supplying bottled drinks to cafés, hotels and campsites (but not directly to tourists), not only in the area affected by the *Erika* oil spill but also in other areas, submitted a claim for loss of revenue for €609 455 (£413 000). The Fund rejected the claim on the ground that it was a 'second degree tourism claim'. In a judgement rendered in November 2004 the Commercial Court in Vannes upheld the Fund's position, holding that the claimant had failed to show that the reduced turnover was due to the pollution resulting from the *Erika* incident. The claimant appealed against the judgement.
- 9.5.10 In a judgement rendered in June 2006 the Court of Appeal in Rennes rejected the appeal. The Court stated that although the 1992 Fund's criteria were not binding on national courts, the Court could use them as a source of inspiration. The Court held that many of the claimant's clients, such as hospitals, military barracks and local authorities, were not affected by the contamination caused by the *Erika* incident and that the losses allegedly suffered by the claimant were of an indirect character since the difficulties experienced by the claimant in supplying bottled drinks to his clients could not be considered with certainty as a direct consequence of the contamination but could have resulted from other factors such as the weather conditions, location and the profitability of the local market.
- 9.5.11 When this document was issued, the claimant had not appealed against the judgement.

Campsite operator

- 9.5.12 The operator of a campsite in Côtes d'Armor, which is located in the northern part of Brittany, submitted a claim in the amount of €23 195 (£15 700) in respect of losses suffered during 2000. The claimant also submitted a claim for €33 265 (£22 550) in respect of losses in 2001. The claim for losses in 2000 was settled at €15 883 (£10 800) and that amount was paid by the 1992 Fund to the claimant in December 2002. The 1992 Fund, however, rejected the claim for losses during 2001 since, with a few exceptions, there was no remaining contamination on the beaches in Brittany after the end of the 2000 season. The claimant brought proceedings against the Fund.
- 9.5.13 In a judgement rendered in September 2004 the Commercial Court in Saint Briec held that the claim was admissible since it considered that the reduction in turnover in 2001 compared to 1999 was caused by the *Erika* incident and ordered the 1992 Fund to pay compensation of €26 719 (£18 100). The 1992 Fund appealed against this judgement.
- 9.5.14 In a judgement rendered in June 2006 the Court of Appeal in Rennes rejected the claim. The Court stated that it had not been demonstrated that the *Erika* incident, which took place in December 1999, had had a negative impact on the tourism activity during 2001 and that other factors such as the weather, the reduction in the working hours in France, the competition from other tourism destinations, was the reason why in 2001 certain tourism businesses had not returned to the level of commercial activity existing prior to the incident.
- 9.5.15 When this document was issued, the claimant had not appealed against the judgement.

10 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.
-