



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

EXECUTIVE COMMITTEE  
9th session  
Agenda item 3

92FUND/EXC.9/3  
25 September 2000  
Original: ENGLISH

## INCIDENTS INVOLVING THE 1992 FUND

### INCIDENT IN GERMANY

#### Note by the Director

<b>Summary:</b>	The 1992 Fund has been notified of a legal action taken by the German authorities against the owner of a ship which is suspected of having caused oil pollution in Germany in 1996. The 1992 Fund has intervened in the proceedings.
<b>Action to be taken:</b>	Give the Director instructions in respect of this incident.

### 1 The incident

- 1.1 From 20 June to 10 July 1996 crude oil polluted the German coastline and a number of German islands close to the border with Denmark in the North Sea. The German authorities undertook clean-up operations at sea and on shore and some 1 574 tonnes of oil and sand mixture was removed from the beaches.
- 1.2 The German Federal Maritime and Hydrographic Agency took samples of the oil that was washed ashore. The German authorities have maintained that comparisons with an analytical chemical database on North Sea crude oils originally developed by the Federal Maritime and Hydrographic Agency showed that the pollution was not caused by crude oil from North Sea platforms. Chemical analysis showed that the oil in the samples was of Libyan origin.
- 1.3 Computer simulations of currents and wind movements made by the Maritime and Hydrographic Agency indicated that the oil could have been discharged between 12 and 18 June approximately 60 - 100 nautical miles north-west of the isle of Sylt.

- 1.4 Investigations by the German authorities revealed that the Russian tanker *Kuzbass* (88 692 GT) had discharged Libyan crude in the port of Wilhelmshaven on 11 June 1996. According to the German authorities there remained on board some 46 m<sup>3</sup> of oil which could not be discharged by the ship's pumps.
- 1.5 The *Kuzbass* departed from Wilhelmshaven on 11 June 1996 and passed a control point near the Dover Coast Guard station on 14 June 1996. Based on an evaluation of data provided by Lloyds Maritime Information Services, the German authorities maintain that there were no other movements of tankers with Libyan crude oil on board during the time and in the area in question. According to the German authorities, analyses of oil samples taken from the *Kuzbass* matched the results of the analyses of samples taken from the polluted coastline.
- 1.6 The German authorities approached the owner of the *Kuzbass* and requested that he should accept responsibility for the oil pollution. They stated that, failing this, the authorities would take legal action against him. The shipowner and his P & I insurer, the West of England Ship Owners' Mutual Insurance Association (Luxembourg) (West of England Club), informed the authorities that they denied any responsibility for the spill.

## **2 1992 Fund's involvement**

- 2.1 The German authorities informed the 1992 Fund that, if their attempts to recover the cost of the clean-up operations from the owner of the *Kuzbass* and his insurer were to be unsuccessful, they would claim against the 1992 Fund.
- 2.2 If the German authorities were to pursue a claim against the 1992 Fund, the question arises as to whether they have proved that the damage resulted from an incident involving one or more ships as defined in the 1992 Civil Liability Convention (cf Article 4.2(b) of the 1992 Fund Convention).
- 2.3 The definition of 'ship' in Article I.1 of the 1992 Civil Liability Convention covers also unladen tankers in certain circumstances and so, by reference, does the definition of ship in the 1992 Fund Convention. Article I.1 of the 1992 Civil Liability Convention reads:

'Ship' means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

- 2.4 The limitation amount applicable to the *Kuzbass* under the 1992 Civil Liability Convention is estimated at approximately 38 million SDR (£35 million).

## **3 Legal actions**

- 3.1 In July 1998 the Federal Republic of Germany brought legal actions in the Court of first instance in Flensburg against the shipowner and the West of England Club, claiming compensation for the cost of the clean-up operations for an amount of DM2.6 million (£815 000).
- 3.2 The 1992 Fund was notified in November 1998 of the legal actions. In August 1999, the 1992 Fund intervened in the proceedings in order to protect its interests.
- 3.3 The German authorities have based their legal actions *inter alia* on the facts set out above. The 1992 Fund is examining the documents presented in support of the actions.
- 3.4 The owner of the *Kuzbass* and the West of England Club have presented pleadings to the Court. The position taken by the owner and the Club is summarised below.

The chemical analyses provided by the German authorities have shown only that the oil carried in the *Kuzbass* and the oil found ashore both originated from Libya, without stating that the chemical composition of the oils was identical. The chemical analyses carried out on behalf of the shipowner and the Club, however, demonstrated that the oils were not identical. In particular, the latter analyses showed that, although both oils were of Libyan origin, the oil carried by the *Kuzbass* was Libyan Brega crude oil whereas the polluting oil was not Libyan Brega crude oil.

With respect to the question of whether the oil pollution might have been caused by the washing of the tanks of the *Kuzbass*, tank washing would normally be carried out only in exceptional cases, ie if a tank had to be repaired or if another cargo had to be taken on board that should not come into contact with the residues of the cargo carried on a previous voyage. In the case of the *Kuzbass*, the tanker was proceeding to the Mediterranean to load a cargo of crude oil and the conditions of the tanks were such that they did not require washing. In addition, it would not have been technically possible to pump out the oil which remained on board.

The route followed by the *Kuzbass* was far from the areas where the oil which caused the pollution was alleged to have been discharged into the sea. Copies of the original Russian sea charts, the course recorder and the ship's logbook have been provided in support of this position.

As regards the data provided by Lloyd's Maritime Information Services showing that there were no other movements of tankers with Libyan crude oil on board in June 1996 in the area in question, the reports of Lloyd's Maritime Information Services cover only laden tankers, and do not give any information on the movements of unladen tankers which are most likely to carry out tank washing.

- 3.5 The shipowner and the West of England Club have also referred to the results of the investigation of the German police and of the Italian public prosecutor<sup><1></sup>, both of which, according to the owner and the Club, have not found any valid evidence to support the accusation against the *Kuzbass*.
- 3.6 In their reply to the Court, the German authorities have made the following points:

The *Kuzbass* had carried Libyan crude oil. The analysis of samples of the oil on the polluted beaches had established that this oil was also Libyan crude oil. The *Kuzbass* was the only oil tanker passing the North Sea en route to Helgoland Bay during June 1996. There was *prima facie* evidence that the pollution could only have been caused by the *Kuzbass*. The analysis carried out on behalf of the shipowner and the Club did not rebut this *prima facie* evidence. The assertion by the shipowner and the Club that the two oils were not identical was not sustainable, on the basis of current scientific standards. The *Kuzbass* had a leak between a sloptank and a cargo tank. It was no longer maintained that the oil pollution was caused by a single tank washing, but the pollution was caused by the discharge of slops. It must be assumed, therefore, that already on a previous laden voyage pure cargo had seeped through the leak into the slop tank, and that the slop tank had, in part, been filled with slops originating from previous washings and that the leakage created a slop highly enriched with crude oil. The *Kuzbass* had then discharged this mixture on the voyage from Cuxhaven to the Mediterranean.

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<1> The port of discharge of the next cargo was in Italy.

- 3.7 The court has appointed an expert to consider the evidence as to the origin of the oil, and in particular whether the samples of oil and sand mixture contained residues of tank washing and/or residues of slops and whether the residues originated from Libyan Brega crude oil. The expert's report is expected to be available in November 2000.

**4 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 this incident as it may deem appropriate.
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