



**INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992**

EXECUTIVE COMMITTEE  
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Agenda item 3

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## INCIDENT INVOLVING THE 1992 FUND

### ERIKA

#### Note by the Director

<b>Summary:</b>	A claim has been submitted in respect of the cost of a publicity campaign carried out by the Comité Départemental du Tourisme in Vendée. A new study has been carried out within the French Ministry of Economy, Finance and Industry on the likely level of claims from the tourism industry. The 1992 Fund's experts have examined the results of the study. The Director makes observations on the estimates made and on the possibility of increasing the level of the 1992 Fund's payments.
<b>Action to be taken:</b>	a) to decide whether a claim in respect of a publicity campaign is admissible in principle; and b) to consider the level of the 1992 Fund's payments.

#### **1 Claim by the Tourism Committee of the Department of Vendée**

- 1.1 The Tourism Committee of the Department of Vendée (Comité Départemental du Tourisme de Vendée (CDT)) has claimed FF10.2 million (£950 000) for the cost of a publicity campaign to restore the confidence of traditional Vendée tourists in the area following the clean-up of the polluted beaches and in response to extensive negative media coverage of the spill.
- 1.2 The Vendée is an important tourism destination with an annual tourism spending of FF5 500 million (£500 million).
- 1.3 The CDT operates its own tourism monitoring unit, which has shown that over 80% of visitors to the Vendée are French, many of whom come from large cities and, in particular, the Paris region,

and that over half of the foreign visitors to the Vendée come from the United Kingdom. The campaign carried out by the CDT therefore targeted these areas in particular.

1.4 The costs associated with the campaign to mitigate the effects of the oil spill were as follows:

	FFr
i) Aerial photography for media use	8 980
ii) Reassurance brochure and direct mail initiative for the market in the United Kingdom	66 161
iii) Webcam service providing live camera footage of the clean-up operation	34 653
iv) Advertising in the chain of 'Lina' restaurants in Paris	216 487
v) Regional radio promotion	187 303
vi) Press relations and advertising in 'A Nous Paris' (free Parisien newspaper)	217 080
vii) National French Television advertising campaign	<u>9 452 176</u>
Total	10 182 41

1.5 The television campaign was carried out during the period mid May to early June 2000 to have the maximum impact on restoring the level of bookings for the peak months and to stimulate visits to the area.

1.6 The claimed amount is ten times the CDT's normal marketing budget.

1.7 The criteria applied by the 1992 Fund in respect of the admissibility of claims for costs of measures to prevent pure economic loss are set out in paragraph 9.3 of document 92FUND/EXC.9/7/Add.1.

1.8 The Director makes the following analysis of the claim. The beaches of the Vendée were contaminated by the oil spill and were the subject of negative media coverage following the spill. In the Director's view it was reasonable for the CDT to undertake a publicity campaign in an attempt to mitigate potential losses in the tourism industry. In the view of the experts engaged by the 1992 Fund and the Steamship Mutual, the claim is very well documented. The experts have considered that the costs incurred, which represent only 1.8% of the reduction in tourism spending that might have resulted if the number of visitors has dropped by 10%, are reasonable and not disproportionate to the potential losses that the campaign was intended to mitigate. A 35% reduction was obtained on the costs of the television advertising campaign as a result of the CDT having obtained approval from the Ministry of Tourism for the campaign, a condition of which was that it did not duplicate or conflict with any publicity measures taken at a national level or through other government-approved local initiatives. As a result of the high level of knowledge of Vendée's tourism client base, the CDT was able to target accurately its campaigns on actual markets. The Director considers therefore that the measures offered a reasonable chance of success at the time they were undertaken.

1.9 For the reasons set out in paragraph 1.8, the Director considers that the claim fulfils the criteria for admissibility referred to in paragraph 1.7. The Director proposes therefore that the claim for the costs of the publicity campaign undertaken by CDT should be considered admissible in principle.

## **2 Level of payments**

### **2.1 Introduction**

2.1.1 As mentioned in paragraph 8.3.1 of document 92FUND/EXC.9/7, an extensive study was carried out before the Executive Committee's 8th session within the French Ministry of Economy, Finance and Industry ('the June 2000 study'). As for that study reference is made to document 92FUND/EXC.8/2/Add.1. A summary of the report presented by the Director to that session is

reproduced in Annex I. A summary of the comments of the 1992 Fund's experts on the report is reproduced in Annex II.

2.1.2 On 19 October 2000, the Director received a report of a further study ('the October 2000 study') carried out within the Ministry of Economy, Finance and Industry. This document gives a summary of that study, the comments thereon by the 1992 Fund's experts and the Director's observations.

## 2.2 Summary of the October 2000 study

2.2.1 The June 2000 study was carried out before the start of the tourism season and it was therefore necessary to rely on tourism based on figures from previous years in order to predict the outcome of the 2000 tourism season. The October 2000, report on the other hand, makes predictions on the outcome of the 2000 tourist season based on the actual results for the period January to August 2000 to the extent that they were available. It is emphasised in the report that the October 2000 study had to be carried out within a short period of time with incomplete information, which made it necessary to rely on certain assumptions.

2.2.2 The June 2000 study used two alternative approaches, the demand method<sup><1></sup> and the supply method<sup><2></sup>. As explained in that study, the demand method tends to overestimate the scale of the tourism economy by the use of approximate global figures and by including non-declared revenues, whereas the supply method tends to underestimate it by being restricted to declared figures.

2.2.3 In the report of the October 2000 study it is stated that it was considered that the method giving the highest loss figures was more important for the 1992 Fund, since the 1992 Fund had to ensure that it did not make payments exceeding the maximum amount available under the 1992 Conventions.

2.2.4 It is noted in the report of the October 2000 study that there is a delay in the availability of taxation statistics and that information on VAT payments was only available up to June or July. For this reason the October 2000 study has focused on using the information available in applying the demand method, and the study includes detailed information in respect of the two most important months, July and August 2000.

2.2.5 The October 2000 study is based on the following assumptions:

- a) The period January - August 2000 is totally representative for the year 2000, in view of the weight of this period in relation to the rest of the year.
- b) In the October 2000 study the losses resulting from the *Erika* incident were assessed on the basis of the 1999 spending and not (as was done in the June 2000 study) on the average of spending for the five previous years. There has been a constant increase in the turnover in the tourism business during the period 1995 - 2000. Using 1999 figures increases significantly the basis of the evaluation of the losses suffered.
- c) Instead of using the gross amount of the tourism expenditure, the October 2000 study has used the gross losses, since this is basis of the 1992 Fund's assessment of losses.
- d) The figures for the entire departments have been used. It has not been considered necessary to distinguish between the coastal areas and the areas inland, since the major part of the accommodation in the departments concerned used by tourists are located in the coastal areas. This approach was considered a prudent one. If the 1992 Fund were to

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<1> A macro economic analysis based on an analysis of tourism consumption statistics by market segment and the results of relevant research on average tourist spending.

<2> A micro economic approach based on an estimation of the turnover of tourism businesses obtained by a detailed analysis of declarations for tax purposes from businesses of all types in the tourism sector.

reject claims from inland areas to a larger extent than anticipated in the study, this would increase the margin of safety in the assessments.

- e) The types of accommodation other than hotels and camping sites represent a great variety of businesses, eg holiday apartments let through agencies or directly by the owners. For accommodation of this type there is only partial information available concerning holiday apartments let through agencies. For half of this sector the losses have been calculated using the reductions in lettings reported by the national agency group Clévacances. For the remaining 50% of this sector the losses have been calculated using the reductions in hotel occupancies.
- f) As for non-commercial accommodation no information is available. It has been assumed that the reduction in business is corresponding to half of that experienced by hotels. This assumption has been considered justified, since the *Erika* incident would have less impact on this category of accommodation (secondary houses, stay with parents or relatives).
- g) A correction has been made for weather factors. The month of July 2000 was unusually rainy. This correction has only been made for camping sites, on the assumption that bad weather did not have an effect on other types of accommodation.

2.2.6 In the October 2000 study the calculation of the likely losses has been made for each of the five affected departments as follows:

	FFr
Finistère	102 million
Morbihan	310 million
Loire-Atlantique	212 million
Vendée	421 million
Charente-Maritime	<u>51 million</u>
Total	1 096 million

2.2.7 The result of the October 2000 study can be summarised as follows. The total amount of the losses in the tourism sector admissible for compensation is estimated at FFr1 096 million (£103 million). This figure is compared to the estimate in the previous study of FFr800 - 1 500 million (£75 - 140 million). In the October 2000 report the view is expressed that this represents a considerable reduction of the potential risk assessed in the June 2000 study. It is also maintained that the assumptions made in the October 2000 study are conservative. It is mentioned in the October 2000 report that information obtained during the study from the Tourist Bureaus confirmed that the tourist season turned out better than expected.

2.2.8 The October 2000 report concludes that on the basis of the most recent data the level of compensation payments can be increased while still maintaining a safety margin. It is suggested that, on the assumption that the claims from the sectors other than tourism will amount to FFr300 million (£28 million) (which in the view of the public bodies involved would be on the high side), and adding an extra safety margin of FFr200 million (£19 million) in the tourism sector, the total amount of the admissible claims would reach FFr1 600 million (£150 million). It is maintained in the October 2000 study report that this would allow the 1992 Fund to increase the level of payment to 75%. It is also stated in the report that if the level of payments were increased to 60%, the safety margin would be FFr600 million (£56.1 million).

### 2.3 Opinion of the 1992 Fund's experts on the October 2000 study

2.3.1 Since the results of the October 2000 study were received on 19 October 2000, the 1992 Fund's experts have had only very limited time to examine them.

- 2.3.2 The 1992 Fund's experts have expressed the view that the October 2000 study provides a valuable follow-up to the June 2000 study. The experts consider it particularly valuable that the statistical data for the period January - August 2000 has been available, thus covering the main tourist season.
- 2.3.3 The 1992 Fund's experts have pointed out that there are two fundamental differences between the June 2000 and the October 2000 studies. They have mentioned that the former study was based on an evaluation of past records, whereas the October study deals with actual data, which are more difficult to collect.
- 2.3.4 The experts have stated that they broadly agree with the interpretations made and the conclusions drawn in the October study. They have, nevertheless, expressed reservations as regards two of the assumptions used in the study, which may have led to an underestimate of the potential admissible losses.
- 2.3.5 The 1992 Fund's experts have referred to the fact that the calculations in the October 2000 study are based on tourism spending in 1999, which gives a higher global base of the spending in the affected area than the June 2000 study, which was based on the average spending from 1995 - 1999. They have stated that in the light of recent growth in the tourism business in the affected area, using the 1999 figures as a basis goes some way towards reflecting this upward trend. However, the experts have drawn attention to the fact that in the assessment of individual claims the 1992 Fund takes into account proven trends of continued growth, which may lead to turnover figures higher than those used in the October 2000 study, and that therefore the method used in that study may result in an underestimate of the total losses.
- 2.3.6 The 1992 Fund's experts have questioned the assumptions made for estimating the losses for types of accommodation other than hotels and camping sites. They have mentioned that whereas the October 2000 study has been based on an analysis of statistics for the hotel and camping sectors, the information for other types of commercial accommodation (self-catering cottages and apartments and holiday villages) is less reliable and comprehensive. The experts have expressed doubts as to whether self-catering apartments not promoted under the quality label of 'Clévacances' would have performed better than those promoted under that label. They have also expressed doubts as to whether these forms of accommodation would have performed at the same level as hotels. As reliable statistics are not available for this type of accommodation, and given the importance of this accommodation sector in the affected areas, the Fund's experts have emphasised that caution is necessary. The experts have stated that as an illustration of the importance of these issues, by changing the assumptions made in the October 2000 study and applying the reduction in occupancy reported by 'Clévacances' to the whole sector of 'other commercial accommodation', the total amount of the admissible losses would increase by FFr300 million (£28 million).
- 2.3.7 The experts have drawn attention to the fact that the October 2000 study does not include any costs for marketing campaigns, which in the experts' view could amount to some FFr50 - 75 million (£45 - 70 million).
- 2.3.8 The 1992 Fund's experts have emphasised that the approach taken by the French courts in their interpretation of 'pollution damage' could have a considerable effect on the total amount of the admissible claims.
- 2.3.9 The experts have also mentioned that since relatively few claims have so far been received from the tourism sector, the experience gained from handling such claims is limited.
- 2.4 The Director's considerations as regards the level of the 1992 Fund's payments
- 2.4.1 The Executive Committee will again have to consider how to strike a balance between the importance of the 1992 Fund's paying compensation as promptly as possible to victims of oil

pollution damage and the need to avoid an over-payment situation. In the Committee's consideration of how to strike this balance the following elements may be of assistance.

- 2.4.2 The figures for the clean-up operation claims and the claims in the fishery and mariculture sectors have been estimated by the 1992 Fund at FFr150 - 200 million (£14 - 19 million) and FFr125 million (£12 million) respectively, ie a total of FFr275 - 325 million (£26 - 30 million). If the estimates in the October 2000 study on the losses in the tourism sector carried out within the Ministry of Economy, Finance and Industry (which include an extra safety margin of FFr200 million) are accepted, the total admissible claims would be in the region of FFr1 600 million (£131 million). If this figure is correct, it might be possible to fix the level of the 1992 Fund's payment at 75% of the proven loss or damage suffered by the individual claimants.
- 2.4.3 If the figure of FFr1 100 (£103 million) given in the report of the October 2000 study is adjusted to take into account the concerns expressed by the 1992 Fund's experts in respect of the calculations of the losses for types of accommodation other than hotels, giving further losses of FFr300 million (£28 million), the estimated total loss in the tourism sector would be FFr1 400 million (£131 million), to which should be added a safety margin of FFr200 million corresponding to that in the October study. To this figure should also be added the estimated losses in other sectors, say FFr325 million (£30 million), plus costs for marketing campaigns of some FFr50 - 75 million (£7 million). The estimated total losses would then be in the region of FFr2 000 million (£168 million). If these estimates are correct, it might be possible to increase the level of the 1992 Fund's payments to 60% of the loss or damage suffered by the individual claimant.
- 2.4.4 It should be noted, however, that there are a number of significant uncertainties in these estimates, as indicated by the 1992 Fund's experts. It should also be recalled that the French Ministry's October 2000 study is based on the criteria for admissibility applied by the 1992 Fund. The Director has been advised, however, that the French courts might take a more extensive approach in their interpretation of the notion of 'pollution damage', and it is not possible to predict the consequences of such an approach. There is also a risk that re-oiling of the coastline will take place as a result of storms and high tides during the winter months, which could cause further loss in particular in the fishery and mariculture sectors.

### **3 Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
- (b) to consider the admissibility of a claim by the Comité du Tourisme of Vendée for the costs of a publicity campaign; and,
- (c) to decide on the level of the 1992 Fund's payments.

## ANNEX I

### Summary of the report of the June 2000 study carried out within the French Ministry of Economy, Finance and Industry

#### Summary prepared by the Director

- 1 The study concentrated on four areas.
  - research by different methods to make an approximate estimate of the scale of the economic activity linked to tourism which could be affected by the oil pollution;
  - an analysis of the rules and practices of the IOPC Funds in compensating claimants for damage and in particular the admissibility criteria applied;
  - definition and critical analysis of a series of indicators to allow hypotheses to be formulated on the likely outcome of the year 2000 tourist season in the areas affected by oil spill;
  - qualitative research based on meetings in five departments and twelve coastal resorts with tourism professionals and representatives of the French State and local bodies responsible for tourism matters.
- 2 In view of the uncertainty as to the geographical area affected, simple criteria have been used to make varying estimates dependent on the local situation:
  - the investigation concentrated on the five departments which had actually been affected by the oil (Finistère, Morbihan, Loire-Atlantique, Vendée and Charente Maritime);
  - a distinction was made between tourism in the coastal areas and inland tourism which is further away from the pollution and therefore less likely to be affected.
- 3 Two methods were used to estimate the scale of the tourism economy:
  - the demand method: a macro economic analysis based on an analysis of tourism consumption statistics by market segment and the results of relevant research on average tourist spending. It is pointed out that this approach tends to overestimate the scale of the tourism economy by the use of approximate, global figures and by including non-declared revenue;
  - the supply method: a micro economic approach based on an estimation of the turnover of tourism businesses obtained by a detailed analysis of declarations for taxation purposes from businesses of all types in the tourism sector. The point is made that this approach tends to underestimate the overall scale of the tourism economy by being restricted to declared figures.
- 4 After making appropriate allowances for the deficiencies in the two methods, the results are as follows:

	Lower estimate (FFr million)	Higher estimate (FFr million)
Tourism turnover all areas	21 901	27 383
Tourism turnover coastal areas only	17 551	21 660

- 5 The report contains a detailed analysis of the IOPC Funds' policy on the admissibility of claims and in particular on the criteria relating to geographic proximity to the affected area and economic dependence on the affected resource. The five departments concerned were divided into four zones each, with varying likelihood of claims being considered admissible as follows:

	Polluted coastal areas	Non-polluted coastal areas	Inland areas adjacent to polluted coastal areas	Inland areas adjacent to non-polluted coastal areas
Activities with typical tourism characteristics	YES	YES	YES	NO
Activities with strong link to tourism	YES	YES	YES	NO
Activities with weak link to tourism	YES	NO	NO	NO
Probability of admissibility	100%	30 to 60%	50%	0%

- 6 By applying these factors to the tourism turnover in these zones, the following range of figures were obtained for the activities in which economic losses were likely to qualify for compensation:

	Lower estimate (FFr million)	Higher estimate (FFr million)
Tourism turnover all areas	14 003	17 767
Tourism turnover coastal areas only	13 125	16 510

- 7 Since the IOPC Funds do not base compensation on reduced turnover but on reduced gross profit (ie turnover less variable costs), a calculation of gross profit margins was made for each type of tourism business and geographical area by using taxation statistics. On the basis of this analysis the range of gross profit generated by tourism businesses in the affected areas which could qualify for compensation is estimated at between FFr8 500 million and FFr11 000 million (£850 - £1 100 million).
- 8 The report emphasises the extreme difficulty in predicting with precision the likely performance of the tourism sector in the summer 2000 season. It is stated that the uncertainty is reinforced by media attention, the conditions of the beaches and the results of the beach inspections as well as the risks associated with the pumping operation. The point is made that caution must be applied to the treatment of any figures provided, particularly figures concerning accommodation bookings which are often given in circumstances which result in their not being completely representative.
- 9 In the absence of sufficiently reliable figures to make precise extrapolations possible, a series of indicators were used (for example, visitor levels at the beginning of the year 2000 based on hotel surveys, petrol consumption patterns in the affected areas) as well as a monitoring of the tourism economy (such as wage levels, declared turnovers and declared job vacancies in the tourism sector). These elements were then cross-referenced with information obtained through interviews with tourism professionals.
- 10 This analysis made it possible, by the use of some objective factors, to predict the trends in respect of the reduction in turnover in each department. These trends have been established by taking into account the factors which may influence the extent of the losses, such as the

proportion of foreign visitors or the proportion of visitors in paying and non-paying accommodation, respectively, and the turnover in the tourism sector in each department.

- 11** On the basis of the hypotheses used, the report contains the following estimates of the total amount of the reduction in gross profit which would qualify for compensation:

	Supply method (FFr million)	Demand method (FFr million)
Higher estimate	1 360	1 503
Lower estimate	847	839

- 12** In conclusion it is stated in the report that, subject to possible changes in trends, the total amount of damage qualifying for compensation in the tourism sector is estimated to be within a range of between FFr800 million and FFr1 500 million (£80 - £150 million).
- 13** It is emphasised in the report that this estimate cannot be considered as a definitive 'prediction' of the outcome of the tourism season. It is pointed out in the report that a change of one percentage point would lead to a difference of between 75 and 100 million Francs.
- 14** The point is made that since the 1992 Fund Convention does not lay down the conditions for the admissibility of claims and it is unlikely that a judge would consider himself bound by the 'jurisprudence' of the Executive Committee, the Courts will have a very wide margin of appreciation.
- 15** The report concludes by stating that the greatest caution should be exercised in determining the level of the 1992 Fund's payments. The analyses made in the report provide elements which can contribute to the decision in this regard. There are so many parameters involved, however, that it is not possible to determine the final level of payments at this stage.

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## ANNEX II

### Summary of the comments by the 1992 Fund's experts, L & R Consultants, on the report of the June 2000 study carried out within the Ministry of Economy, Finance and Industry

- 16 L & R Consultants (L & R) have had little time to examine the report of the study carried out within the Ministry of Economy, Finance and Industry. However, L &R was consulted on the methodology used.
- 17 L & R agree that the impact of the *Erika* incident will vary enormously along the 400 kilometres of affected coastline, with the strongest impact in the most heavily oiled areas. L & R mentions that this pattern is confirmed by L & R's assessment of trading patterns over the Easter – May holiday period and the tourism claims received so far.
- 18 L & R draw attention to several factors which could affect the tourism sector during the summer season 2000, namely:
- the results of the beach inspections carried out by the Direction Départementale de l'Action Sanitaire et Sociale which could lead to the closure of a number of beaches;
  - the weather during the period July – September 2000;
  - the remaining threat of further beach pollution either as a result of high tides washing up trapped oil from the seabed or through further leaks of oil during the operation to remove the oil from the *Erika*;
  - the continued negative media attention.
- 19 L & R have stated that they broadly agree with the conclusion set out in the Ministry report with an overall estimate of the total of the admissible claims for economic loss in the tourism sector of between FFr800 million and FFr1 500 million (£80 - £150 million).
- 20 L & R nevertheless draw attention to the fact that in making the assessment, the drafters of the report have made a number of assumptions regarding the application of the IOPC Funds' criteria for the admissibility of claims which may result in an underestimation of the total amount of the admissible claims.
- It appears that full account has not been taken of the implications of the Funds' policy that the compensation should place the claimant in the same financial situation as if the oil spill had not occurred. This implies taking into consideration any shown growth or decline in the individual businesses over previous years. The drafters of the Report have not considered it appropriate to estimate a global percentage growth in the turnover in the tourism businesses between a base year and 2000. However, it may be possible to establish consistent growth patterns over the last five years in respect of individual claimants, and this would tend to raise the level of admissible claims.
  - The report does not take into account possible claims from businesses outside France.
  - Claims from major hotel chains have been disregarded on the assumption that such claimants would not be able to prove sufficient economic dependency on the affected resource.

- The approach taken in the report excludes from admissibility any claims from outside the 'admissibility zones'. In some isolated cases claimants outside these zones may be able to justify dependency on the affected resources and therefore qualify for compensation.
  - Claims for costs of publicity campaigns undertaken to mitigate losses have not been included.
  - No account has been taken of any claims for losses suffered in 2001.
- 6 According to L & R these factors may lead to an underestimation in the report of the total amount of the admissible claims in the tourism sector. However, L & R consider that this underestimation may be offset by other factors, eg that a number of claimants may, for various reasons, decide not to present claims.
-