



## INCIDENTS INVOLVING THE 1992 FUND

### PRESTIGE

#### Submitted by Spain

**Summary:**

This document contains information about the reduction by Spain of the claim submitted for the costs of the removal of oil from the wreck of the *Prestige* from €109.2 million to **€24 168 264.80**.

It also contains information concerning the implementation of the agreement adopted at the last session of the Executive Committee in October 2005 on the apportionment of the available compensation between the affected States. Spain is finalising the arrangements necessary to receive the amount due to it, notably the issue of the bank guarantee which will be submitted to the Fund within the coming days.

It is also reported that the payment of compensation by the Spanish State to individuals, businesses and the autonomous and municipal administrations affected is practically complete.

**Action to be taken:**

To take note of the information contained in this document, and, in particular, to accept the admissibility of the new claim for costs of the operations for the removal and bioremediation of the oil from the wreck of the *Prestige* for an amount of €24.2 million. See paragraph 4.

### **1 Removal of oil from the wreck of the *Prestige***

- 1.1 On 15 April 2005, Spain submitted a claim for an amount of €109.2 million for the cost of operations to remove the oil from the wreck of the *Prestige*. At its session in October 2005, the Executive Committee decided to defer any decision on the admissibility of the claim, but instructed the Director to examine all the elements of the claim with a view to identifying possible admissible items and amounts for consideration by the Committee.
- 1.2 During the discussion, several delegations firmly supported the admissibility of the claim, others supported its admissibility in principle and other delegations accepted that some parts of the claim could be admitted and preferred to assess the different elements of the claim.
- 1.3 The European Union (EU) (Cohesion Fund) granted aid to the Spanish State for 85% of the items requested relating to the work of the removal of the oil from the wreck. The table below shows the amounts requested by Spain from the EU, the amounts granted, those already paid by the EU and those that are pending.

	CLAIMED	GRANTED (85% of requested amount)	RECEIVED	PENDING
PRELIMINARY STUDIES	31 900 000	27 115 000	5 423 000	21 692 000
REMOVAL OF THE OIL	66 828 000	56 803 800	45 443 040	11 360 760
TOTAL	98 728 000	83 918 800	50 866 040	33 052 760

- 1.4 Consequently, Spain informed the IOPC Fund of the reduction of the initial claim of €109.2 million to **€24 168 264.80**, itemised as follows:

*(Total of 15% of the amount not included in the Cohesion Funds grant (EU) plus 100 % of the costs of the operation not claimed from those Funds)*

15% study of solutions	€ 785 000.00
15% removal of oil	€10 024 200.00
100% not requested from EU	€ 359 065
<b>Total</b>	<b>€24 168 264.80</b>

- 1.5 In the light of this new situation, Spain considers that all the analyses and assessments of the Director concerning this claim should be based on the new claim.
- 1.6 Various meetings were held and there were various exchanges of views between the Director and the Spanish representatives, without an agreement being reached on how to approach the situation. The Director maintains that the admissibility of the claim should be based on the total cost of the operations, while the Government of Spain considers that the admissibility of the claim should be determined on the basis of the amount claimed.
- 1.7 One of the main arguments put forward by the Fund regarding the admissibility of the claims is the reasonableness of those claims, ie the proportionality between the amount claimed and the losses or damage that might be caused if measures were not adopted to prevent the pollution. Indeed, as the Director points out in paragraph 2.6 of document, 92FUND/EXC.32/4/Add.1, the Claims Manual states that 'Claims for the costs of measures to prevent or minimise pollution damage are assessed on the basis of objective criteria'.
- 1.8 It is clear, in the view of Spain, that, **in accordance with the Claims Manual, and as its own name indicates**, the objective criteria and the concept of proportionality should be applied to the actual amount of the claims made, and never to what is not claimed. The analysis put forward by the Director in section 4 of document 92FUND/EXC.32/4/Add.1 is thus incorrect, in the view of Spain, since it means analysing elements or amounts which have been considerably reduced or which have simply disappeared.
- 1.9 The Government of Spain considers that the approach in document 92FUND/EXC.32/4/Add.1 presented by the Director **is not consistent**, since it is based on amounts and arguments which are not anymore real. The Fund should not analyse or assess **what is not claimed**.
- 1.10 As the Director recognises in paragraph 4.8, the cost per tonne of oil removed from a wreck as a preventive measure is a very useful parameter in determining the effectiveness of an operation. In accordance with the new claim submitted by the Government of Spain, **the table in paragraph**

4.5 of document 92FUND/EXC.32/4/Add.1 should consequently be amended and replaced by the following table :

TABLE OF COSTS BORNE BY THE IOPC FUND IN PREVIOUS REMOVAL OPERATIONS AND SPANISH CLAIM FOR THE *PRESTIGE*.

SHIP	COST	YEAR	QUANTITY (Tm)	COST	ESTIMATED COST IN € IN 2004	COST PER TONNE REMOVED (updated)
<i>Tanio</i>	France	1980	10 000	£15 300 000.00	€62 855 291.13	€6 285.53
<i>Yuil n°1</i>	Korea	1995	670	£3 200 000.00	€5 288 937.27	€7 893.94
<i>Osung n°3</i>	Korea	1997	27	£3 200 000.00	€5 338 752.57	€197 731.58
<i>Prestige Claimed(1)</i>	Spain	2002	13 800	€24 168 264.80	€24 168 264.80	€1 751.32

- 1.11 In the light of the information contained in the above table, it can be seen that the cost per tonne removed from the wreck of the *Prestige* is 1,751.32 €/Tm, **significantly lower than in previous cases** where the Fund accepted admissibility of the claims submitted for oil removal operations. That is why despite the various considerations expressed by the Director in document 92FUND/EXC.32/4/Add.1 concerning the comparison between the claims admitted for removal of oil in the cases of the *Tanio*, *Yuil N°1* or *Osung N°3* with the new claim of the *Prestige*, there is no doubt given this very low unit cost in the case of the *Prestige* and the unit cost accepted for other incidents, that it cannot be argued that it is disproportionate or inadmissible.
- 1.12 The experts from both the International Tanker Owners Pollution Federation Limited (ITOPF) and the Centre de Documentation, de Recherche et d'Expérimentations sur les Pollutions Accidentelles des Eaux (CEDRE) recognised in their respective reports that the wreck of the *Prestige* would have released oil residues over many years (more than 50 years), and that the costs of maintaining surveillance systems and oil pollution and recovery services during that time were not assessed. It is therefore not possible to make an objective comparative calculation of the reasonableness of the claim submitted by Spain but, taking into account the previous discussions that took place at the 31st session of the Executive Committee in October 2005, during which many delegations accepted definitively or in principle the initial claim of €109.2 million as reasonable and admissible, it can be inferred that the new claim of €24.2 million can be considered wholly reasonable and admissible.
- 2 Implementation of the agreement of the Executive Committee in October 2005 on the apportionment of the available amount between the States affected**
- 2.1 Following the adoption of the agreement at the last session of the Executive Committee, the Spanish Administration commenced the necessary arrangements to fulfil the commitments contained in paragraph 3.7.64 of 92FUND/EXC.30/10. For this purpose several meetings were held with the Director of the Fund which made it possible to work together on the proper presentation of the documents.
- 2.2 Considerable progress has thus been made in fulfilling the obligations assumed by the Spanish State in the terms agreed at the last session of the Executive Committee. It is anticipated that this coming 27 February 2006 the bank guarantee will be issued in accordance with the conditions set out in the Records of Decisions of October 2005, document 92FUND/EXC.30/10. Thus Spain will be able to receive the amount due to it in the days following the session of the Committee on 27 February 2006.

**3 Payment of compensation**

- 3.1 The Spanish State has paid practically all the compensation claimed, both to individuals and to businesses affected and also to the Autonomous and Municipal Administrations which were affected.
- 3.2 The Spanish Administration is working on the submission of the claim relating to the payments to these Administrations, in order to avoid duplication and repetition of claims already submitted, as explained by the Spanish delegation at previous sessions of the Executive Committee.

**4 Action requested of the Executive Committee**

The Executive Committee is invited to consider the information contained in this document, and in particular to decide:

- (a) whether the admissibility of the claim should be based on the total cost of the operations or the actual amount claimed; and
- (b) the admissibility of the claim of €24 168 264.80 for the cost of removal of oil from the wreck of the *Prestige*.
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