



## INCIDENTS INVOLVING THE 1992 FUND

### PRESTIGE

#### Removal of oil from the wreck

#### Note by the Director

**Summary:**

The Spanish Government presented a claim for a total of €09.2 million (£75 million) for the costs of the operation to remove the oil from the wreck of the *Prestige*, including the costs of preparatory work and studies. At its October 2005 session the Executive Committee considered the question of whether the claim was admissible in principle. The Committee decided to defer any decision on the admissibility of the claim, but instructed the Director to collaborate with the Spanish Government to examine all the elements of the claim with a view to identifying possible admissible items and to assess the admissible quantum of those items for consideration by the Committee at a future session. Three meetings have been held with representatives of the Spanish Government.

The European Commission has awarded the Spanish Government some €3.9 million (£58 million) towards the costs of the oil removal operation, including the preparatory studies and work conducted in 2003. As a consequence the Spanish Government has reduced its claim to €4.2 million (£16.5 million).

As a result of his examination the Director has identified a number of activities undertaken in 2003, the costs of which he considers admissible in principle. However, activities undertaken in 2004 all relate to the actual operation to remove the oil from the forward section of the wreck and the addition of nutrients to the tanks after the bulk of the oil had been removed in order to enhance the biodegradation of any remaining oil residues. The Director is of the view that, under the criteria for admissibility adopted by the 1992 Fund Assembly, the costs of these activities are inadmissible in principle.

**Action to be taken:**

Decide whether certain items relating to the claim for the costs of the oil removal operation are admissible in principle under the 1992 Civil Liability and Fund Conventions.

### **1 The operation to remove the oil from the sunken wreck**

- 1.1 The *Prestige*, originally laden with a cargo of 77 972 tonnes of heavy fuel oil, broke in two and sank some 260 kilometres west of Vigo (Spain), the bow section to a depth of 3 500 metres and the stern section to a depth of 3 830 metres. A manned submersible vehicle was used to temporarily seal and plug cracks to minimise the escape of oil, as a result of which the estimated rate of loss was reported to be less than 20 litres per day.

- 1.2 The Spanish Government established a Scientific Commission to study the various possibilities for dealing with the wreck. This Commission concluded that there were two possible solutions, namely the extraction of the oil remaining in the wreck by pumping and the confinement of the wreck in a structure of concrete or steel.
- 1.3 On the basis of surveys carried out in 2003 the quantity of oil remaining in the wreck was estimated to be 13 100 tonnes in the bow section and 700 tonnes in the stern section, with an error of less than 10%, according to a document presented by the Spanish delegation to the Executive Committee (document 92FUND/EXC.22/8/2, paragraph 3.2).
- 1.4 In December 2003, following trials in the Mediterranean and subsequently at the wreck site, the Spanish Government concluded that the cargo remaining in the wreck should be removed using aluminium shuttle containers filled by gravity through holes cut in the tanks. A contract to remove the remaining oil from the *Prestige* was signed between the Spanish Government and the Spanish oil company Repsol YPF. The removal of the oil, which commenced in May 2004, was completed in October 2004. Some 13 000 tonnes of oil cargo was removed from the forepart of the wreck following which nutrients were added to the tanks to promote the biodegradation of the remaining oil residues. No attempt was made to remove or treat the 700 tonnes of oil in the aft section.
- 1.5 The Spanish Government submitted a claim for €109.2 million (£75 million) for the cost of the operation to remove the oil from the wreck of the *Prestige*, including the costs of preparatory work and the feasibility trials conducted in the Mediterranean and at the wreck site. In February 2006 this claim was reduced to €24.2 million (£16.5 million).
- 1.6 In this document the elements of the Spanish Government's claim are examined against the 1992 Fund's admissibility criteria.

## **2 Consideration by the 1992 Fund Executive Committee at its October 2005 session**

- 2.1 At its October 2005 session the Executive Committee considered the question as to whether the Spanish Government's claim, which at that time was for €109.2 million (£75 million), for the costs of the operation to remove the oil from the *Prestige* was admissible in accordance with the 1992 Fund's criteria as set out in the 1992 Fund Claims Manual, in particular whether the operation was technically reasonable. The Committee's consideration was based on documents presented by the Director and the Spanish delegation (documents 92FUND/EXC.30/9/2 and 92FUND/EXC.30/9/3 respectively).
- 2.2 The document presented by the Director included a summary of previous IOPC Funds incidents involving sunken vessels (document 92FUND/EXC.30/9/2, section 2).
- 2.3 The Director had requested the International Tanker Owners Pollution Federation Limited (ITOPF) to provide the 1992 Fund with an opinion on the technical reasonableness of the operation, ie on the basis of the particular circumstances of the incident, the facts available at the time of the decision to undertake the operation and whether the costs incurred and the relationship between those costs and the benefits derived or expected were reasonable.
- 2.4 The Spanish Government had requested an opinion from Dr Michel Girin, Director of the Centre de documentation de recherche et d'expérimentations sur les pollutions accidentelles des eaux (CEDRE), (France), Professor Lucien Laubier, Director of the Institut Océanographique de Paris (IOP), (France) and Dr Ezio Amato, Director at the Istituto Centrale per la Ricerca Scientifica e Tecnologica Applicata al Mare (ICRAM), (Italy) on the ecological and social necessity to deal with the wreck of the *Prestige*.
- 2.5 The two reports were reproduced in full at Annexes I and II to document 92FUND/EXC.30/9/2.

2.6 The Committee noted that the Director had acknowledged the enormous technological and innovative achievement of Repsol YPF and its partners in successfully recovering 13 000 tonnes of oil from a depth of more than 3 500 metres. It was further noted, however, that in the Director's view it had been important that the 1992 Fund had considered the Spanish Government's claim purely against the criteria of admissibility laid down by the 1992 Fund Assembly. In this regard, reference was made to the definition of 'preventive measures' in Article I.7 of the 1992 Civil Liability Convention, namely 'any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage' (cf Article 1.2 of the 1992 Fund Convention). Note was also taken of the criteria for the admissibility of claims for the costs of preventive measures that were developed in 1994 by the 7th intersessional Working Group of the 1971 Fund, approved by the 1971 Fund Assembly in 1994 and endorsed by the 1992 Fund Assembly in 1996 (1992 Fund Resolution N°3, document 92FUND/A.1/34, Annex III) and which was reflected in the Claims Manual as follows<sup><1></sup>:

Claims for the costs of measures to prevent or minimise pollution damage are assessed on the basis of objective criteria. The fact that a government or other public body decides to take certain measures does not in itself mean that the measures are reasonable for the purpose of compensation under the Conventions. The technical reasonableness is assessed on the basis of the facts available at the time of the decision to take the measures. However, those in charge of the operations should continually reappraise their decisions in the light of developments and technical advice.

- 2.7 The Committee noted that both ITOPF and the team of experts appointed by the Spanish Government had considered that the most likely outcome of leaving the oil in the wreck would have been a slow escape of oil from the wreck over many years resulting in the widespread scattering of tar balls over a vast area of the Atlantic Ocean which, depending on winds and currents could have impacted coastlines, particularly the Spanish coast of Galicia and Cantabria. It was also noted that whilst the experts appointed by the Spanish Government had not ruled out the possibility of a major release of oil due to seismic activity, ITOPF had drawn attention to the evidence from wrecks sunk in deep water for more than 30 years, which indicated that a catastrophic release was unlikely.
- 2.8 It was noted that both groups of experts had agreed that it was impossible to quantify the scale of likely pollution damage in monetary terms had the oil not been removed from the wreck, but that the most likely oil release scenario would not have constituted a serious threat to marine resources. It was noted however, that whereas ITOPF had concluded that tar balls that stranded on the coast would have been cleared by local authorities along with other routine debris, the experts appointed by the Spanish Government had pointed out that the costs would have been considerable, and that as a result of the time bar provisions in the 1992 Conventions, those costs would not be recoverable in the longer term. The Committee noted that in the Director's view, although costs of clean-up of pollution occurring after six years from the date of the incident would not be recoverable under the 1992 Conventions, the total costs of such operations would have been very small in comparison with the costs of the operation to remove the oil from the wreck.
- 2.9 It was noted that one of the main differences between the opinions of the two groups of experts was that the experts appointed by the Spanish Government had taken into account the possible social impact of leaving the oil in the wreck, whereas ITOPF had focused solely on the 1992 Fund's admissibility criteria, which did not take social, non-economic effects into account. It was noted that in his consideration of the admissibility issue the Director had also not taken such effects into account.

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<1> This text is set out in the 2002 edition of the Manual (pages 18-19). The same text appears in the April 2005 edition (page 21), approved by the 1992 Fund Assembly at its 9th session, held in October 2004.

- 2.10 The Committee noted that the Director had shared the views of ITOPF and the experts appointed by the Spanish Government that a catastrophic release of the oil was unlikely and that any escape of oil from the wreck would likely have been in the form of a slow leak of small quantities of oil and that although there was a perceptible risk of oil released from the wreck reaching seafood cultivation areas in Galicia and tourist beaches of the Atlantic islands, a substantially greater release of oil would have been required to cause significant damage to these resources.
- 2.11 The Committee noted that in light of the considerations set out above the Director had expressed the view that the oil remaining in the sunken sections of the *Prestige* did not pose a significant pollution threat and that the costs of the operation to remove the oil were disproportionate to any potential economic and environmental consequences of leaving the oil in the wreck and that for this reason, the Director had considered that the Spanish Government's claim did not fulfil the criteria for admissibility laid down by the IOPC Funds' governing bodies, namely that the operation should be reasonable from an objective, technical point of view.
- 2.12 The Spanish delegation stated that the claim for €109.2 million included potentially admissible items besides the cost of the oil removal itself, such as the cost of the scientific advisory committee, monitoring the oil leaking from the wreck and the oil removal feasibility studies and that these claim items could be assessed separately by the Fund's experts. The Spanish delegation made the point that ITOPF had concluded in its report that there was a perceptible risk of oil escaping from the wreck reaching Galicia. The Spanish delegation stated that this could have had a serious effect on fishing resources. The point was also made that the islands off the coast of Spain, which were very sensitive and received a very high degree of environmental protection, could have been affected. In response to various interventions the Spanish delegation stated that the decision to remove the oil from the wreck had been taken after the deliberations and advice of a scientific advisory committee composed of more than 40 internationally recognised experts. The point was made that the Executive Committee had been continuously informed about the oil removal operation and that no opinion had been offered against it. The Spanish delegation also stated that the costs of the oil removal operation were not, in its view, disproportionate bearing in mind the amount of oil that was removed and in comparison with costs of similar operations that had been accepted by the IOPC Funds in relation to past incidents.
- 2.13 The French delegation stated that the decision on the admissibility of the claim should not be based on the summary of the report supporting the Director's proposal, which was in its view incomplete. That delegation also stated that it did not agree that the risk posed by the oil remaining in wreck was low and pointed out that if the Spanish Government had not removed the oil there would have been pollution over decades.
- 2.14 The Portuguese delegation stated that it considered that the oil removal operation was reasonable and the claim was admissible.
- 2.15 Several delegations expressed sympathy with the Spanish Government, but stressed nevertheless that the Fund's admissibility criteria in respect of preventive measures had to be fulfilled. Those delegations endorsed the view expressed by the Director that the cost of the oil removal operation was disproportionate to the potential economic and environmental consequences and that the claim did not therefore fulfil the Fund's admissibility criteria. The point was made that it was the right of individual States to decide what preventive measures it should take, but that if the decision was made on the basis of potential social, non-economic effects, these could not be taken into account when assessing the admissibility of claims for the costs of such measures.
- 2.16 Other delegations expressed the view that, since it was not possible to predict with any certainty what the outcome of leaving the oil in the wreck would have been, it would be difficult for any government to resist pressure from the public to ensure that the risk was eliminated. The point was made that the fact that many governments would probably have acted in the same way, suggested that the measures taken were reasonable. The point was also made that three States would have potentially been at risk from further pollution if no action had been taken and that, as

a matter of principle, States were obliged to protect the environment in accordance with various United Nations Conventions and that the Fund needed to review its admissibility criteria so as to be in step with such obligations. Those delegations were of the view that the claim was admissible in principle.

- 2.17 Other delegations stated that whilst the total costs associated with the oil removal operation seemed to be disproportionate to the likely environmental and economic consequences of leaving the oil in the wreck, it could be that some of the costs of the surveys and studies may have been reasonable up to the point when the actual cost of the oil removal operation was known. Those delegations favoured assessments of the different elements of the claim to see if some were admissible.
- 2.18 Two delegations suggested that in view of the importance of the issue it might be appropriate to request a further technical study on the technical reasonableness of the decision.
- 2.19 The Committee decided to defer any decision on the admissibility of the claim, but instructed the Director to collaborate with the Spanish Government to examine all the elements of the claim with a view to identifying possible admissible items and to assess the admissible quantum of those items for consideration by the Committee at a future session (document 92FUND/EXC.30/10, paragraph 3.7.101).

### 3 Funding by the European Commission

- 3.1 On 4 December 2003 the Commission of the European Communities (European Commission) decided to make a concession of aid to the Spanish Government in connection with the preparatory technical work for the application of solutions for dealing with the oil in the wreck of the *Prestige* as put forward by the Scientific Commission. The total amount claimed was €31 900 000 (£21.8 million) and the amount awarded from the European Commission Cohesion Fund<sup><2></sup> was €27 115 000 (£18.5 million), corresponding to 85%.
- 3.2 On 31 March 2005 the European Commission also decided to make a concession of aid to the Spanish Government for the costs of removing the oil from the wreck of the *Prestige*. The total amount claimed was €66 828 000 (£45.6 million) and the amount awarded from the Cohesion Fund<sup><3></sup> was €56 803 800 (£38.8 million).
- 3.3 In January 2006 the Spanish Government confirmed the amounts awarded by the European Commission and informed the Director that it had so far received a total of €50.9 million (£34.7 million) and that further payments totalling €3.1 million (£22.6 million) were pending as set out in the table below.

Claim item	Claimed amount €	Amount awarded by the Commission €	Amount paid to date €	Amount pending €
Preparatory studies	31 900 000	27 115 000	5 423 000	21 692 000
Extraction 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

<2> European Commission Decision C (2003) 4693 of 4 December 2003

<3> European Commission Decision C (2005) 1091 of 31 March 2005

- 3.4 As a result of the amounts awarded by the European Commission, the Spanish Government has reduced its claim to €24 168 265 (£16.5 million), of which € 785 000 (£3.3 million) relates to the costs incurred in 2003 and €19 383 265 (£13.2 million) relates to the costs incurred in 2004.

#### **4 Director's assessment in accordance with the Executive Committee's instruction**

- 4.1 As instructed by the Executive Committee the Director has carried out a detailed examination of all the elements of the claim by the Spanish Government with the aim of identifying items that might be admissible in accordance with the Funds' criteria.
- 4.2 The costs of the operation to remove the oil from the vessel can be conveniently divided into two main parts, namely costs incurred in 2003 totalling €3.1 million (£22.6 million) and costs incurred in 2004 totalling €7.1 million (£51.9 million). The costs incurred in 2003 relate to operations to seal further oil leaks emanating from the wreck, and various studies, including investigations into the feasibility of different methods of extracting the oil from the wreck. Costs incurred in 2004 relate to the actual oil removal operation and the introduction of nutrients into the tanks of the fore section of the wreck after the bulk of the oil had been removed in order to promote the biodegradation of the remaining oil residues.

##### *Meetings with the Spanish Government*

- 4.3 Since the Executive Committee's October 2005 session three meetings have been held between the IOPC Funds' Secretariat and representatives of the Spanish Government to discuss the various elements of the claim and exchange views regarding their admissibility.
- 4.4 At a meeting in January 2006, the Spanish Government informed the Director that, as a result of the payments received from the European Commission (see paragraphs 3.1-3.4 above), the Spanish Government's claim would be reduced from €109.2 million (£75 million) to €24.2 million (£16.5 million).
- 4.5 During the discussions the Spanish Government drew attention to the costs of previous oil removal operations from sunken wrecks that the IOPC Funds had accepted compared with the costs of the operation to remove the oil from the *Prestige*, and in particular the costs per tonne of oil removed from those wrecks as set out in the table below.

Incident	Cost of oil removal <sup>&lt;4&gt;</sup>	Cost per tonne of oil recovered	Cost of oil removal at 2004 monetary values	Cost per tonne of oil recovered at 2004 monetary values
	€	€	€	€
<i>Tanio</i> , France, 1980	22 644 000	2 264	62 855 291	6 286
<i>Yuil N°1</i> , Republic of Korea, 1995	4 736 000	7 069	5 288 937	7 894
<i>Osung N°3</i> , Republic of Korea, 1997	4 736 000	175 407	5 338 753	197 732
<i>Prestige</i> , Spain, 2002	109 200 000	7 913	109 200 000	7 913

<4> With the exception of the *Prestige* incident, the amounts quoted are as assessed by the IOPC Funds. The amounts in pounds sterling have been converted into Euros on the basis of an exchange rate of €=£0.6823.

- 4.6 The Spanish Government has pointed out that the cost per tonne of oil recovered from the wreck of the *Prestige* was very similar to the costs per tonne of oil recovered in the case of the *Tanio* and *Yuil N°1* incidents all of which were considerably lower than the cost per tonne of oil removed from the *Osung N°3*. The Spanish Government therefore maintains that the costs of the operation to remove the oil from the *Prestige* are not disproportionate when compared with these other incidents.
- 4.7 The Spanish Government has further maintained that the 1992 Fund should consider the question of the proportionality of the costs of the operation on the basis of the revised claim and has pointed out that the cost per tonne of oil removed from the wreck is then reduced to € 751 per tonne, which is well below the costs per tonne arising from previous incidents.
- 4.8 However, the Director is of the view that the cost per tonne of oil recovered, although a useful parameter in assessing the cost effectiveness of an operation, is not the overriding consideration when considering the reasonableness of a decision to remove oil from a wreck against the Funds' admissibility criteria, but rather the overall cost of the operation in relation to the economic and environmental consequences of leaving the oil in the wreck.
- 4.9 When assessing the technical reasonableness of the operations, in the Director's view account should be taken of the location of the wreck and any sensitive resources in the vicinity.
- 4.10 In the case of the *Tanio* the fore-section of the wreck was located in 90 metres of water some 56 km off the coast of Brittany, a coast supporting a major oyster cultivation industry and tourism. In the case of the *Yuil N°1* the vessel sank in 70 metres of water just 10 km from the Korean coast and in an area of intensive fishing and mariculture, including the surface cultivation of seaweed. The oil remaining in both wrecks therefore had the potential to cause serious economic damage.
- 4.11 The very high cost per tonne of the oil removed from the *Osung N°3* was due to the fact that only 27 tonnes of oil was eventually found to remain in the wreck compared with an estimated 1 400 tonnes which had been believed to be on board at the time the decision was taken to undertake the operation. However, as a result of the environmental and economic sensitivity of the area in which the wreck was lying, the Korean experts concluded that potential damages of €64 million (£43.4 million) could have resulted from a further spill from the wreck. In this context the overall cost of the oil removal operation of €4.7 million (£3.2 million) was not, in the Director's view, disproportionate. When it became apparent that the quantity of oil on board was considerably less than had been predicted, the 1971 Fund Executive Committee considered that on the basis of the information that was available prior to the commencement of operations, it had been reasonable to take the measures to remove the oil and decided that claims for the costs of the operation would be admissible in principle.

*Director's consideration*

- 4.12 The Director remains of the view that the costs of the actual operation to remove the oil from the wreck of the *Prestige* were disproportionate to any potential economic and environmental consequences of leaving the oil in the wreck and that for this reason the claim by the Spanish Government does not fulfil the 1992 Fund's admissibility criteria, namely that the operation should be reasonable from an objective, technical point of view.
- 4.13 The Director notes that in early 2003 the Scientific Commission had proposed that the oil should be recovered from the wreck and that in February 2003 the Spanish Government requested Repsol YPF to lead the oil removal project. Repsol YFP subsequently initiated a number of studies, which culminated in a presentation in Madrid on 30 April 2003 of the options for the recovery of the oil together with estimates of the costs. Two possible options were put forward. The first involved the use of flexible shuttle bags to recover the oil, the cost of which was estimated to be €48.1 million (£32.8 million). The second option involved the construction and installation of a marquee over the wreck on the seabed to contain the released oil prior to pumping to the surface.

The cost of this option was estimated at €9.5 million (£40.6 million). Costs of initial preparatory studies were estimated to be the region of €10 million (£6.8 million).

- 4.14 The Director considers that by 30 April 2003 the very high costs of the oil removal operation in relation to the potential economic and environmental effects of leaving the oil in the wreck were apparent and that costs incurred subsequent to that date were therefore for the most part inadmissible. However, on the basis of the information contained in the supporting documentation submitted with the claim the Director considers that there are a number of items of expenditure incurred in early 2003 that are admissible in principle. The Director also considers that the costs of the work undertaken in July and August 2003 to complete the sealing of the wreck are admissible in principle.

*Sealing of the wreck*

- 4.15 Between December 2002 and February 2003 the French oceanographic institute IFREMER assisted the Spanish authorities in undertaking limited surveys of the wreck and sealing leaks of oil emanating from the wreck. This work was undertaken using the manned submersible (bathyscape) *Nautile*. The 1992 Fund, in its assessment of previous claims by the Spanish Government, has already allowed for costs totalling €6.0 million (£4.1 million) associated with the work undertaken by IFREMER.
- 4.16 When Repsol YFP was appointed in February 2003 to take the lead in dealing with the oil remaining in the wreck, it was decided to undertake further sealing operations in order to deal with oil leaks not previously addressed by IFREMER and to effect permanent repairs to leaks that had been sealed temporarily by IFREMER. However, Repsol YFP decided, for safety reasons, to undertake this work using an ROV. As a result of these secondary-sealing operations it was reported that the combined rate of release of oil from the wreck was reduced from 700 litres to 10 litres per day. The Director considers that the secondary sealing operation was a reasonable preventive measure and that the associated costs were proportionate and are therefore admissible in principle.

*Determination of the quantity of oil remaining in the wreck*

- 4.17 The volume of oil remaining in the two sections was determined using a Reservoir Performance Monitor, a device used in oil exploration to measure levels of oil flow in oil wells. The device was modified so that it could be used from the underwater ROV. The use of this device enabled the quantity of oil in the stern and fore part to be accurately measured.
- 4.18 The Director considers that the costs associated with the use of this device are admissible in principle, since knowledge of the quantity of oil remaining in the wreck and the quantity already spilled was of benefit in assessing the scale of any future pollution threat.

*Analysis of the structural integrity of the wreck*

- 4.19 An underwater examination of the wreck was undertaken to identify any damage inflicted on its structural integrity as a result of the sinking and the impact with seabed in order to determine whether it was capable of withstanding the planned activities, including the drilling work necessary to install valves for the extraction of the oil. The study involved the use of an underwater metal and coating thickness gauge from the ROV and computer-based finite element analysis. The study indicated that the impact with the seabed had little effect on the structural integrity of the wreck and that the effect of drilling holes in the deck or the hull would be essentially negligible.
- 4.20 The Director is of the view that the knowledge gained concerning the integrity of the wreck, besides demonstrating the safety of carrying out the oil removal operations, would also have been of benefit in assessing pollution risks associated with long-term corrosion and the likelihood

of structural failure. The Director therefore considers that the costs associated with this study are admissible in principle.

*Bathymetric survey of the wreck and the surrounding seabed.*

- 4.21 This survey was carried out to determine the true orientation of the wreck in relation to the seabed and the geotechnical conditions surrounding the wreck, including the resistance and the seismicity of the seabed. Although this survey was undertaken primarily in connection with the oil recovery operation, the data obtained would have been of benefit in determining the quantity of oil remaining in the wreck and the stability of the wreck for the purpose of an overall risk assessment. The Director therefore considers that the costs for the bathymetric survey and wreck mapping are, to the extent that they assisted in the assessment of the pollution threat posed by the wreck, admissible in principle.

*Oceanographic studies*

- 4.22 Measurements of water currents, sea temperature and salinity were undertaken in the vicinity of the wreck. Although the data generated was primarily for the purpose of assessing the likely stability of the oil recovery shuttles and the marquee structure, some of the information obtained would have been necessary for the purpose of measuring the quantity of oil remaining in the wreck and the stability of the wreck. The Director considers that the costs for these oceanographic studies are, to the extent that they assisted in the assessment of the pollution threat posed by the wreck, admissible in principle.

*Studies of the oil cargo onboard the wreck*

- 4.23 A number of studies were undertaken in Spain, Norway and Canada to examine the physical, chemical and rheological properties of the cargo oil. These studies were aimed at determining the behaviour of the oil under the conditions prevailing at the wreck location, and in particular the rate at which it would flow from the wreck's tanks. The Director considers that a knowledge of the properties of the oil under the prevailing conditions on the seabed would have assisted in the assessment of the short and long-term tendency of the oil to leak from cracks and fissures. The Director therefore considers that the costs of these studies are admissible in principle.

*Admissible costs in respect of the operations in 2003*

- 4.24 The total costs of the sealing of the wreck and the various studies and surveys referred to in paragraphs 4.15-4.23 above, including the development of ROV technology and the development of measuring tools, were some €1.3 million (£7.7 million). However, further analysis of these claim items is required before a detailed assessment of the admissible quantum can be determined.

*Non-admissible costs*

- 4.25 The Director considers that the other costs incurred in 2003, totalling €1.8 million (£14.9 million), which related to basic engineering studies of the two proposed alternative methods of extracting the oil and pilot-scale and field-scale tests of the shuttle containers, are not admissible, since they were incurred after the very high costs of the operation in relation to the potential economic and environmental effects of leaving the oil in the wreck were known. For the same reason the Director considers that the costs incurred in 2004, which related to the actual oil recovery operation, are inadmissible.

*Director's conclusions*

- 4.26 On the basis of a detailed examination of the items claimed by the Spanish Government for the costs of removing the oil from the wreck of the *Prestige* the Director has identified a number of

items giving rise to costs incurred in 2003 that appear to be admissible in principle. The total cost of these potentially admissible items is some €1.3 million (£7.7 million), although a further, more detailed analysis of these claim items would be required in order to identify the extent to which they had a bearing on the risk posed by the oil in the wreck and assess the admissible quantum. However, as a result of the European Commission aid payments the claim for costs incurred in 2003 has been reduced to € 785 000 (£3.3 million). This reduced claim amount would have to be taken into account for the purpose of determining the total amount of compensation due to the Spanish Government under the 1992 Conventions.

- 4.27 The Director remains of the view that the costs incurred in 2004, totalling €76.1 million (£51.9 million), which relate to the actual oil removal operations and the application of nutrients to the tanks in the forepart of the wreck after the bulk oil had been removed, are inadmissible in principle, since these costs were disproportionate to any potential economic and environmental consequences of leaving the oil in the wreck. As a result of the European Commission aid payments the claim for the costs of the operations in 2004 has been reduced to €19 383 265 (£13.2 million). Had this been the actual cost of the oil removal operation, the Director agrees that it would have been more proportionate to the potential economic and environmental consequences. However, the Director is of the view that in considering the admissibility of the claim, the technical reasonableness of the operation and the proportionality between the costs of the operation and the potential economic and environmental consequences, the total costs of the oil removal operation, as opposed to the balance of the costs after deducting the amount granted by the European Commission, should be taken into account. The Director therefore concludes that the claim for costs incurred in 2004, even for the reduced amount, is inadmissible.

## **5 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 decide whether certain items relating to the claim for the costs of the oil removal operation is admissible in principle; and
- (c) to give the Director such instructions concerning this claim as it may deem appropriate.

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