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COMPENSATION
FUND 1992

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INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:

The *Erika* broke in two off the coast of Brittany (France). Some 14 000 tonnes of heavy fuel oil was spilled. It is estimated that the sunken bow section still contains about 8 300 tonnes of cargo and the stern section some 6 300 tonnes of cargo. Surveys of the sunken parts of the ship have been carried out. Consideration is given to which measures should be taken to prevent further oil escaping from the wreck, and it appears that the best solution would be to pump the remaining oil to the surface. The French authorities have carried out oil recovery at sea. Clean-up operations continue along some 400 kilometres of polluted coastline. The shipowner's P & I insurer and the 1992 Fund have established a claims handling office in Lorient. The insurer has made payments to a number of claimants.

Action to be taken:

Decide the level of the 1992 Fund's payments.

1 The incident

- 1.1 On 12 December 1999 the Malta registered tanker *Erika* (19 666 GT) broke in two in the Bay of Biscay, some 60 nautical miles off the coast of Brittany, France. All members of the crew were rescued by the French marine rescue services.
- 1.2 The tanker was carrying a cargo of 30 000 tonnes of heavy fuel oil of which some 14 000 tonnes was spilled at the time of the incident. The bow section floated vertically for several hours before sinking during the night of 12 December in about 100 metres of water. A French salvage company succeeded in attaching a line to the stern section and attempted to tow it further off

shore. However, during the morning of 13 December the stern section sank to a depth of 130 metres about 10 nautical miles from the bow section.

- 1.3 It is estimated that about 8 300 tonnes of cargo remains in the bow section and a further 6 300 tonnes in the stern section. Very small quantities of cargo continue to escape from both sections of the wreck despite the measures which were taken to prevent leakage.
- 1.4 The *Erika* is entered in the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

2 Clean-up operations

- 2.1 The French Naval Command in Brest, Brittany, took charge of the response operations at sea in accordance with the National Contingency Plan, 'Plan Polmar'. The French Navy mobilised a number of vessels for offshore oil recovery. The Governments of Germany, the Netherlands, Spain and the United Kingdom also provided oil recovery vessels to assist in the response. The Steamship Mutual chartered an asphalt carrier to receive recovered oil. Although the oil recovery operations were hampered by the severe weather conditions and the very high viscosity of the oil, it was reported that some 1 100 tonnes of oil was collected at sea. Some limited operations at sea were initiated in view of the continuous leakage of the two sections of the vessel. These operations are aimed at recovering oil at sea in an attempt to prevent new shoreline oiling.
- 2.2 On 25 December 1999 heavy oiling of shorelines occurred in the region of St Nazaire, La Baule, Le Croisic and La Turballe. Widespread but intermittent oiling subsequently occurred over some 400 kilometres of shoreline between South Finistère and Charente-Maritime. The Préfets of the five affected Départements took charge of shoreline clean-up with assistance from the coastal local authorities, the Civil Defence Corps, local fire brigades and the army. A total of some 5 000 people were engaged in shoreline clean-up. Operational centres were established at Quimper (South Finistère), Vannes (Morbihan), Nantes, St Nazaire and La Baule (Loire Atlantique), La-Roche-sur-Yon and les Sables d'Olonne (Vendée), and La Rochelle (Charente-Maritime).
- 2.3 The use of greatly increased manpower and supporting mechanical equipment significantly reduced the quantity of oil remaining on shore in Loire Atlantique, and only residual contamination remains in Finistère Sud and Morbihan. Many shorelines in southern Vendée are now clean, but buried oil remains a problem in Ile de Noirmoutier and extensive secondary cleaning of shorelines is necessary in the Baie de Bourgneuf. Some re-oiling has occurred on a regular basis on a number of beaches, particularly during spring tides and periods of bad weather. Some oil trapped in inaccessible areas or possibly deposited on the seabed may be resurfacing during storms and high tides, but the quantities of oil involved are not very large in most cases.
- 2.4 Secondary clean-up operations are aimed at the removal of oil on rocks or trapped in crevasses and of buried oil mixed with seaweed. A number of large scale operations are being undertaken, particularly in Loire Atlantique, the Département where the greatest quantities of bulk oil arrived ashore. These operations are expected to continue for one or two months. In many areas efforts are being made to mechanise the operations in response to the decreasing numbers of volunteers and the decrease in the quantities of oil that continue to arrive on the shores. It is expected that many public access areas will be clean before Easter, although this depends on whether re-oiling of shorelines continues.
- 2.5 Some 150 000 tonnes of waste has now been collected from shorelines and has been temporarily stockpiled at three locations, much of it without any segregation according to oil content. TotalFina SA has undertaken to carry out the disposal operations and is evaluating different disposal options.

- 2.6 The 1992 Fund has monitored the clean-up operations through experts from the International Tanker Owners Pollution Federation Ltd (ITOPF), who arrived on site on 12 December 1999, assisted by a number of local surveyors.
- 2.7 The administrative courts in Nantes and Poitiers have appointed experts to carry out an investigation into the condition of the beaches before the incident and the type and extent of the pollution caused. The 1992 Fund is following these investigations through its technical experts.

3 Impact of the spill

- 3.1 About 60 000 oiled birds (mainly guillemots) have been collected so far, some 48 000 of which were dead. Attempts have been made to clean the remaining 12 000 collected birds, half at various centres in France and the rest in Belgium, the Netherlands and the United Kingdom.
- 3.2 Oil entered a number of coastal marinas contaminating many pleasure boats and moorings.
- 3.3 Oil also entered the Baie de Bourgneuf that supports an important oyster and mussel fishery. Large quantities of shellfish were harvested for the Christmas market before the oil reached the coast. Some shellfish have been externally contaminated with spots of oil, and the authorities have imposed a ban on the harvesting and sale of products from the Baie de Bourgneuf. As a result of the monitoring programme put in place by the French authorities and the guidelines issued by the Agence Française de Sécurité Sanitaire des Aliments (AFSSA), shellfish in numerous areas have been found to have accumulated hydrocarbons exceeding accepted limits, and the marketing of produce in these areas is now banned. Extensive cultivation areas in Vendée, Loire Atlantique and Morbihan are now subject to bans. Some areas in Finistère have also been closed for fisheries by foot. Regular sampling programmes are in place to monitor the contamination of the shellfish. It has been reported that in a number of areas, bottom living organisms such as spider crabs and some fish have been found stained by oil when brought to the surface and some nets are becoming oiled during some fishing operations. These problems are leading to economic difficulties for fishing communities, particularly in Morbihan.
- 3.4 The affected coastline supports an important tourist industry during the summer months.

4 Operations to prevent further oil escaping from the wreck

- 4.1 As mentioned above, the two sunken parts of the *Erika* contain significant quantities of oil. The French navy carried out an underwater survey of these parts using a remote operated vehicle (ROV). Total Fina commissioned a further series of surveys during January and February 2000. The results of these surveys have given a clear indication of how the parts of the wreck are lying on the seabed, the contours of the seabed and the extent of debris on the bottom of the sea.
- 4.2 The 1992 Fund has followed the surveys through its technical experts.
- 4.3 The Director offered at an early stage to make available to the French authorities the IOPC Funds' experts involved in the oil removal operations in the *Yuil N°1* and *Osung N°3* cases.
- 4.4 Further inspections of the sunken sections of the *Erika* have been made using ROVs. On the basis of these inspections it is estimated that the stern section contains a maximum of 6 300 tonnes of heavy fuel oil and the bow section a maximum of 8 300 tonnes. Some minor leakages have been plugged temporarily.
- 4.5 An agreement was entered into on 26 January 2000 between Total Fina and the French Government under which Total Fina undertakes to carry out inspections of the two parts of the wreck and any operations to prevent further oil from escaping, including any oil removal operations, and to finance directly such inspections and operations.

4.6 Total Fina has investigated the options available. Four options were studied:

- confinement of the oil
- neutralisation of the oil
- refloating of the wreck with the oil on board
- removal of the oil by pumping

4.7 Confinement

4.7.1 Under this option the two parts of the wreck would be covered by rocks. Since the rock dumping method would require the use of some 650 000 m³ of material, it is likely that the wreck would collapse and the oil escape.

4.7.2 Alternatively, the two parts of the wreck would be encased in a concrete jacket. It has been considered difficult to carry out such an encasement, and there would in any event remain a risk of corrosion and the ensuing escape of oil.

4.7.3 A variation studied was the placing of a steel hangar over each part of the wreck. It has been considered that such an operation would be very difficult from a technical point of view. It would also take a long time before the structure could be fabricated, resulting in a long delay before the operation could be carried out.

4.8 Neutralisation

4.8.1 One method would entail mixing chemicals with the cargo so as to render the mixture solid. It was considered however that this method was impracticable in the circumstances. The main difficulties with this method lie in the necessity to ensure that the solidifying agent would mix with the viscous cargo oil so as to generate the required chemical reaction uniformly throughout all cargo spaces.

4.8.2 Another option would be to incinerate the oil underwater, but the method was not considered practical. It was considered unrealistic to be able to provide sufficient burning capacity under water to ensure total incineration of the cargo, without running the risk of spillage as a result of uncontrolled explosions.

4.8.3 Consideration was also given to biodegradation of the cargo by introducing bio-agents into the cargo. It was considered that it would be difficult to inject the correct proportion of bio-agents into the oil and to ensure that sufficient oxygen was available to enable biodegradation to take place. It was also recognised that it would take a considerable time for the total degradation of the oil. The conclusion was that this method was not practicable.

4.9 Refloating

Another option would be to refloat the sunken parts of the *Erika*. Due to the structure of the *Erika* having become severely damaged, it was considered that the sunken parts would not be able to withstand any type of lifting operation. The collapse of the structure during the lifting would result in major quantities of oil escaping. Such an operation would also require the assistance of divers who would have to work in very dangerous conditions. This option was therefore discarded.

4.10 Pumping

Three different methods of pumping were considered.

- *Suboption 1 Hot water*

4.10.1 This method involves the injection of hot water into the cargo tanks to reduce the viscosity of the oil. A second hot water line forces the hot water through an eductor, a device which draws the previously heated oil from the tank mixed with the water used for heating. The oil water mixture is pumped to a reception vessel. This method was used in the *Tanio* case, where it encountered considerable difficulties but was in the end successful. It was nevertheless considered a relatively inefficient method, since the ratio of water to oil would be extremely high.

- *Suboption 2 Direct pumping*

4.10.2 Under this method the oil would be pumped directly from the wreck using an ROV. This method was successfully used in the case of the *Yuil N°1* and the *Osung N°3*. However, the viscosity of the oil in the *Erika* is much higher than the oil in the previous two cases, and the *Erika* oil would therefore have to be heated in order to become sufficiently fluid to be pumped.

- *Suboption 3 Hydrostatic transfer method*

4.10.3 This method relies on the pressure differential between the deepest part of the compartment containing oil and the oil/water interface forcing the oil out of the tank through valves. The oil in the tanks is forced through valves at the top of the tank. Once outside the tank the oil would be mixed with a thinning agent. The mixture would then be temporarily stored in a tank placed on the seabed before being pumped to the surface. This method has not been used previously for oil removal. Laboratory tests have been undertaken and field tests will be carried out in the very near future.

4.11 Conclusions

4.11.1 Following the studies carried out by Total Fina, the French Government has taken the decision that the oil removal operations should be carried out by using a pumping method. An invitation to tender was issued to four contractors. Bids should be submitted by 21 March 2000. It is expected that the contract for the operation will be awarded in late April 2000 and that the work will commence in June 2000 and be carried out during the period June – September 2000.

4.11.2 The 1992 Fund's technical experts,^{<1>} although they were not consulted by the French Government, have examined the various options available. They share the French Government's view that removal of the oil by pumping is the preferred option, and in the experts' view this method would involve the least risk of further oil escaping. They have not yet expressed an opinion on the three sub options within the pumping method.

4.11.3 At its 6th session the Executive Committee was informed that it had been decided to set up a group of three technical experts to advise the French Government and Total Fina on the technical merits of the operations, in particular on technical issues where there was disagreement between the Government and Total Fina. The Committee noted that the Director had been approached by Total Fina with a request that the 1992 Fund should nominate a technical expert as a member of the Group.

4.11.4 The Committee agreed with the Director that the 1992 Fund should accept Total Fina's request and nominate such an expert. The Committee also agreed with the Director that the expert nominated by the Fund would act solely as an adviser in his personal capacity and that he would

<1> Captain John Noble and Mr Alan Stanley of BMT Murray Fenton Edon Liddiard Vince Ltd, Marine Consultants.

not in any way engage or commit the 1992 Fund. It was emphasised that Total Fina's claim for reimbursement of the costs incurred for the removal of the oil from the wreck or to prevent further pollution would be assessed as any other claim, ie on the basis of the criteria of the technical reasonableness of the operations (document 92FUND/EXC.6/5, paragraph 3.7).

- 4.11.5 In a letter dated 18 February 2000 the Director informed the French Government, through the Secrétaire Général de la Mer, of the position taken by the Committee, and nominated Mr Alan Stanley, with Captain John Noble as substitute, to participate in the group of experts. The French Government informed the Director in a letter dated 9 March 2000 that his proposal had been accepted.

5 Claims Handling Office

- 5.1 In anticipation of a large number of claims, the Steamship Mutual and the 1992 Fund established a Claims Handling Office in Lorient. The office opened on 12 January 2000.
- 5.2 The Claims Handling Office has at present a staff of five persons. More staff will be recruited as required.
- 5.3 The Fund Secretariat has been closely involved in the establishment of the office and its operation. The Head of the Claims Department has visited the office twice. The Claims Officer in charge of the incident has spent the best part of seven weeks in the office. Other staff members have assisted in the operation of the office. The Director has also visited the office.
- 5.4 Various claim forms have been prepared and are being made available to potential claimants.
- 5.5 The Claims Handling Office will serve as a focal point for the technical experts engaged to examine the claims for compensation.
- 5.6 ITOPF has overall responsibility for advising on the assessment of claims for costs in respect of clean-up operations and also for claims arising from pollution damage to fisheries and aquaculture. French fishery experts have also been engaged by the Steamship Mutual and the 1992 Fund to assist in the assessment of claims. French surveyors who are monitoring shoreline clean-up operations will also examine claims in respect of clean-up and property damage. Tourism experts have been appointed by the Steamship Mutual and the Fund to assess claims in respect of publicity campaigns and economic losses in the tourism sector.

6 Claims for compensation

- 6.1 The clean-up operations at sea and on shore will result in claims for significant amounts from the French Government as well as from the préfetures and the local authorities concerned. The disposal of the collected oily waste will also give rise to large claims. Any operations to remove the oil from the wreck will result in substantial costs.
- 6.2 As mentioned in paragraph 3.3 above, the fishery sector in several areas is facing serious difficulties. Some 279 claims have already been received from the fishery sector, and it is expected that there will be significant further claims from this sector. Claims for damage to yachts, other vessels and moorings are also expected.
- 6.3 Although it is likely that the clean-up on shore will be completed well before the start of the 2000 tourist season, it is believed that the incident will have a serious negative impact on the tourism industry in the affected area. It is difficult at this stage to assess the extent of this impact. However, eight hotels and restaurants have already presented claims for compensation and there are indications that the reservations at hotels, holiday apartments, guest houses and camping sites in the area for the summer of 2000 are lower than normal. The Claims Handling Office has already received over 900 letters of intent regarding future claims. It is therefore likely that

claims for economic losses in the tourism industry will be very high. There may also be significant claims for publicity campaigns to mitigate losses.

- 6.4 As at 9 March 2000 the Claims Handling Office had received 401 claims for compensation, in the following categories:

Clean-up operations	16
Property damage	68
Fishing	89
Fishfarming and shellfish cultivation	65
Shellfish gathering	125
Fish processors and distributors	4
Tourism	26
Other loss of income	8

- 6.5 The French Government will submit claims for the cost of the clean-up operations at sea and on shore. Local authorities will also submit claims relating to onshore clean-up.
- 6.6 It is impossible to make any estimate of the total amount of claims at this stage.
- 6.7 Further information concerning the potential claims will be given in an addendum to this document.
- 6.8 At its 6th session the Executive Committee authorised the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of this incident, to the extent that the claims did not give rise to questions of principle which had not previously been decided by the Committee (document 92FUND/EXC.6/5 paragraph 3.9).

7 Publicity campaigns

- 7.1 At its 6th session the Executive Committee considered a request from the Département de Vendée that the 1992 Fund should pay the cost of a publicity campaign to counteract the negative consequences for the tourism industry of the *Erika* incident. The Committee noted that the Département de Vendée had stated that it did not have funds to cover this exceptional campaign, and that in view of the necessary preparations for such a campaign it was important that an agreement in principle could be reached with the 1992 Fund as soon as possible.
- 7.2 The Committee recalled that the Assemblies had decided that the cost of measures to prevent pure economic loss (ie losses suffered by persons who had not suffered damage to property) might be admissible for compensation if the following criteria were fulfilled:
- ? the cost of the proposed measures was reasonable
 - ? the cost of the measures was not disproportionate to the further damage or loss which they are intended to mitigate
 - ? the measures were appropriate and offered a reasonable prospect of being successful
 - ? in the case of a marketing campaign, the measures related to actual targeted markets.
- 7.3 The Committee also recalled the established policy that the 1992 Fund did not normally accept claims for measures to prevent pure economic loss until the measures had been carried out and that the Fund was cautious about advance payments, since it would not take on the role of a claimant's banker.
- 7.4 The Director stated that he accepted that it was important in the *Erika* case for a publicity campaign to be undertaken to counteract the impact on the tourism industry of the incident. He stated that in his view it would be necessary to make a careful analysis of which method was

likely to be most efficient and cost-effective. The Director expressed the view that it was important that any marketing campaigns were well co-ordinated and that the French Government appeared to be best placed to ensure such co-ordination.

- 7.5 The Executive Committee accepted that in principle it appeared reasonable that measures should be taken to counteract the negative consequences of the incident on the tourism industry. The Committee emphasised the need for co-ordination of any publicity campaigns to this effect and that the French Government should co-ordinate any such campaigns. The Committee considered that the French Government and the Director should work together on this issue.
- 7.6 Having been informed of the position taken by the Executive Committee the Département de Vendée in a letter to the Director stated that since the decentralisation in 1982 the General Council of the Département was in charge of the promotion of the image of the respective Départements and that therefore a publicity campaign fell within its competence. The Département requested therefore that the Executive Committee's position should be reviewed.
- 7.7 In his reply the Director stated that the Executive Committee had emphasised the need for the co-ordination of any publicity campaign and considered that the French Government should take on such a role. He stated that once the 1992 Fund had been informed of the general scope of the proposed campaigns, the Fund would be prepared to discuss the issues involved with the Département de Vendée as well as with the French Government and any other public and private entity.

8 Level of payments

- 8.1 At its 6th session the Executive Committee considered whether and, if so, to what extent the Director should be authorised to make payments.
- 8.2 It was noted that Total Fina had in a letter to the Director undertaken not to pursue against the 1992 Fund or against the limitation fund the claims relating to the cost of any inspections and the operations in respect of the wreck referred to in paragraph 4.5 above relating to the *Erika*, if and to the extent that the presentation of such claims would result in the total amount of the claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions, ie 135 million SDR. The Committee also noted that Total Fina had made a corresponding undertaking in respect of the cost of the collection and disposal of the oily waste generated by the clean-up operations, the cost of its participation in the beach clean-up up to a maximum of FFfr40 million and the cost of a publicity campaign to restore the tourist image of the Atlantic coast up to a maximum of FFfr30 million.
- 8.3 The French delegation informed the Committee that 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. The delegation stated that this undertaking covered all the expenses incurred by the French State in combating the pollution, *inter alia* those expenses falling within the framework of Plan Polmar, including expenses incurred by local authorities paid or reimbursed through Plan Polmar. That delegation stated that the undertaking covered also all measures which the State might take in different sectors to reduce the consequences of the incident, including any publicity campaigns to this effect. That delegation made the point that the French Government's claims would rank before any claims by Total Fina if funds would be available after all other claims had been paid in full. The French delegation mentioned that the French Government had taken steps to establish a procedure under which claimants whose claims had been assessed by the 1992 Fund's technical experts and approved by the Fund could obtain advance payments from the Banque du développement des petites et moyennes entreprises (Small and medium enterprise development Bank).

- 8.4 The Committee recalled that the Assembly had taken the view that - like the 1971 Fund - the 1992 Fund should exercise caution in the payment of claims, if there was a risk that the total amount of the claims arising out of a particular incident might exceed the total amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention, since under Article 4.5 of the 1992 Fund Convention all claimants have to be given equal treatment. It was also recalled that the Assembly had expressed the view that it was necessary 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 (document 92FUND/A.ES/2/6, paragraph 3.1.14).
- 8.5 The representative of the Steamship Mutual recognised that at this early stage it was not possible to predict the overall cost of clean-up and preventive measures and of economic losses resulting from the incident. He stated that, nevertheless, the Steamship Mutual would be prepared to make funds available for interim payments in appropriate cases. He mentioned that the Steamship Mutual was in the process of establishing a limitation fund reflecting the limitation of liability of the shipowner and the insurer under the 1992 Civil Liability Convention (approximately 9.15 million SDR or FFfr82 million). He stated that the Steamship Mutual believed that the limitation amount would be sufficient to provide funds for interim payments in appropriate cases up to the Executive Committee's next session in April 2000. The representative stated that such payments would be made on the basis of the advice of the technical experts engaged jointly by the Steamship Mutual and the 1992 Fund, subject to the claims being properly documented and admissible in principle in accordance with the criteria laid down by the 1992 Fund.
- 8.6 The Executive Committee expressed its appreciation of the position taken by the French Government and Total Fina 'to stand last in the queue' for their claims. The Committee also expressed its satisfaction with the undertaking made by the Steamship Mutual as regards interim payments.
- 8.7 During the discussion it was emphasised that the 1992 Fund should make all efforts to make compensation available to victims as soon as possible, in order to demonstrate that the regime of compensation established by the 1992 Conventions worked satisfactorily and that there was no need to create any alternative liability scheme.
- 8.8 The Executive Committee noted that the Director was authorised, pursuant to Internal Regulation 7.9, to make provisional payments to victims to mitigate undue financial difficulties not exceeding a total of 6 million SDR (£5.1 million) for any one incident.
- 8.9 The Executive Committee shared the Director's view that it was not possible at this stage to make any meaningful estimate of the total amounts of the established claims and that this applied in particular to the claims in the fishery and tourism sectors. In view of this uncertainty, the Committee decided, therefore, that the Director's authority to make payments should for the time being be limited to provisional payments under Internal Regulation 7.9 (document 92FUND/EXC.6/5, paragraph 3.16).
- 8.10 The Spanish delegation informed the Committee that claims might be submitted by Spanish fishermen who operated in the proximity of the area affected by the *Erika* incident.
- 8.11 The Director was instructed to collect as much information as possible on the likely level of the claims arising out of this incident, so as to enable the Committee to assess the situation as to the level of payments at its 7th session.
- 8.12 The Director is continuing his efforts to collect information on the likely level of the claims.

9 Legal actions against the shipowner/Steamship Mutual and Total Fina

- 9.1 The owner of a taxi boat in Concarneau has taken legal action against the shipowner, the management company of the *Erika*, the Steamship Mutual and Total Fina in the Tribunal de Grande Instance in Dunkirk claiming compensation of FFr1 million (£100 000) for loss of income for three years as a result of the incident. In his submission to the Court he has stated that the Claims Handling Office had offered him insufficient, if not 'ridiculous' compensation.
- 9.2 It should be noted that this claimant has not presented a claim to the Claims Handling Office.
- 9.3 The Director intends to intervene in the proceedings on behalf of the 1992 Fund, pursuant to Article 7.4 of the 1992 Fund Convention, in order to protect the Fund's interests (cf Article 7.6).

10 Limitation proceedings

- 10.1 On 10 March 2000 the shipowner commenced limitation proceedings in the Tribunal de Grande Instance in Nantes.
- 10.2 The limitation amount applicable to the *Erika* under the 1992 Civil Liability Convention is approximately 9.2 million SDR (FFr82 million or £7.7 million).

11 Maximum amount payable under the 1992 Fund Convention

- 11.1 Under Article 4.4(e) of the 1992 Fund Convention, the maximum amount of compensation payable in respect of the *Erika* incident under the 1992 Conventions (135 million SDR) should be converted into the national currency in question, ie French Francs, on the basis of the value of that currency by reference to the SDR on the date of the decision of the Assembly as to the first date of payment of compensation.
- 11.2 At its 6th session, the Executive Committee decided that, in accordance with the Assembly's decision in the *Nakhodka* case (document 92FUND/A.2/29, paragraph 17.2.8), the conversion of 135 million SDR into French Francs should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 6th session, ie 15 February 2000.
- 11.3 Since the applicable currency rates would only be available on 17 February 2000, the Executive Committee instructed the Director to make the necessary calculations and report the result to the Committee's 7th session.
- 11.4 At 15 February 2000, 1 SDR = 1.368616 and 1 Euro = FFr6.55957 (fixed). The conversion on the basis of the rates applicable on that day therefore gives 135 million SDR = FFr1 211 966 881. The Executive Committee is invited to endorse this calculation.

12 Cause of the incident

- 12.1 The French Permanent Enquiry Commission for Incidents at Sea (Commission Permanente d'enquête sur les événements de Mer) is carrying out an investigation into the cause of the *Erika* incident. The Commission's preliminary report was published on 13 January 2000.
- 12.2 A summary of certain facts concerning the *Erika* and the sequence of events leading to the incident, based on the Commission's preliminary report and additional information available, was given in paragraphs 9.3 – 9.10 of document 92FUND/EXC.6/2/Add.1.
- 12.3 The Commission drew the following preliminary conclusions as to the cause of the incident:

The incident was most likely attributable to failure of the ship structure, namely the rupture of the bulkhead between two tanks, the tearing or cracking of the

deck plating and the tearing of the side shell plating. This failure led to the ship's bow buckling upwards and then breaking. The structural weakness was not detected by the classification society nor by the ship's operator or manager, notwithstanding that indication of these weaknesses was given by pre-charter vetting and during Port State controls. The crew were not to blame for the incident. The actions by the French authorities did not give rise to any observations. The actions taken by the shipowner during the crisis appear not to have been in conformity with the ISM Code.

- 12.4 The shipowner and the Steamship Mutual have expressed reservations in respect of several points of these preliminary conclusions.
- 12.5 The Maltese authorities are also carrying out an investigation into the cause of the incident.
- 12.6 A criminal investigation into the cause of the incident is being carried out at the Tribunal de Grande Instance in Paris.
- 12.7 At the request of a number of parties, the Tribunal de Commerce in Dunkirk appointed experts to investigate the cause of the incident ('expertise judiciaire'). The Court decided that the investigation should be carried out by a panel of four experts. Most of the interested parties have participated in the proceedings.
- 12.8 The Tribunal de Grande Instance in Sables d'Olonne has also appointed experts to investigate the cause of the incident and to assess the extent of the damage caused. Attempts have been made to get all parties to agree that only one investigation should be made into the cause of the incident, ie that in Dunkirk, but the party which made the request to the Court in Sables d'Olonne has not yet accepted this solution. The Court has decided, however, that the investigation should be limited to the assessment of the damage caused in the affected area.
- 12.9 The 1992 Fund is following the investigations through its French lawyers and technical experts.
- 12.10 The Tribunal de Commerce in Dunkirk decided that, since Total Fina had requested the expertise judiciaire, it should make an advance payment to cover the ensuing costs. Total Fina has requested that the 1992 Fund should contribute to the advance payment. The Director has informed Total Fina that the Fund is not prepared to do so.

13 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 give the Director such instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate;
 - (c) to decide whether to authorise the Director to make payments of claims and to determine the level of such payments; and
 - (d) to endorse the Director's calculation as to the conversion of 135 million SDR into French Francs.
-