



INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:	Six additional judgements have been rendered by the French courts with regard to the claims submitted by the salt producers in Guérande. A summary of these judgements is provided.
Action to be taken:	Information to be noted.

1 Court judgements in respect of claims against the 1992 Fund

Civil Court in Saint Nazaire

1.1 Claim by salt producers

- 1.1.1 In May 2007 the Civil Court in Saint Nazaire rendered judgements in respect of 136 claims from salt producers in Guérande for losses caused by a lack of production in 2000 as a result of an imposed ban on water intake as well as for losses caused by the late start of the 2001 season and for the costs of restoration of salt ponds in 2001 (document 92FUND/EXC.37/4, paragraphs 4.1 to 4.6).
- 1.1.2 The 1992 Fund and Steamship Mutual had considered that salt production had been possible in Guérande in 2000, but that as a result of the interruption caused by the ban on water intake, the maximum yield would have been 20% of that expected for that year. Interim compensation payments were therefore made to the claimants for the outstanding 80%.
- 1.1.3 With regard to the claims for restoration costs and for loss of production in 2001, the Steamship Mutual and the 1992 Fund had taken the view that since salt production was possible at the end of 2000, the restoration of the ponds and the decision not to produce salt in 2001 were not a consequence of the *Erika* incident.
- 1.1.4 At the request of the 1992 Fund and Steamship Mutual, a court expert was appointed to examine whether it was feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. The court expert presented his report in late December 2004. The court expert concluded that salt production would have been feasible in 2000, but that as a result of the bans that were imposed, the maximum yield would have been between 4% and 11% of normal production.
- 1.1.5 In the light of the court expert's findings, the 1992 Fund approached claimants with the objective of exploring the possibility of reaching out-of-court settlements. Such settlements have been

reached with 23 of the salt producers in Guérande. Claims were still pursued in court by 136 salt producers from this area.

1.1.6 The claims and the judgements are summarised in the following table:

Item	Amount claimed €	Fund's assessment	Amount granted €
Loss of production in 2000	724 531	Already compensated	665 192
Loss of production in 2001	1 016 405	Rejected	496 710
Costs incurred in restoration	1 234 821	Rejected	292 655
Procedural costs (art 700 civil code)	88 090	Rejected	39 700
Total	3 063 847	0	1 494 257

1.1.7 The Court stated that it was not bound by the Fund's criteria for admissibility of claims and that it was for the Court to interpret the concept of 'pollution damage' and 'preventive measures' in the 1992 Conventions and to apply it in each individual case.

1.1.8 With regard to the claim for loss of production in 2000 the Court, after reviewing the scientific analysis carried out by the court expert and considering the views expressed by other experts presented by the salt producers, noted that there was not scientific consensus on the health risks and efficiency of the booms deployed. The Court considered that the risk of pollution from the presence of oil in the vicinity of the salt ponds, the pumping operations in the *Erika* and the oil remaining on the rocky shore nearby made it reasonable to maintain a complete closure of the salt ponds to prevent the entry of oil that would have caused substantial damage to the ponds. The Court also considered that the decision not to produce salt in 2000 was a reasonable measure to prevent or minimise pollution damage.

1.1.9 The Court accepted that the loss of salt production in 2001 was also a consequence of the *Erika* incident since the oil in the vicinity of the salt ponds was only removed during the spring of 2001 and clean-up operations were still carried out in 2001 on rocky shores nearby. The Court decided, however, to reduce the compensation amount by 50% to take into account the impact that the rainfall in 2001 had had on the salinity of the salt ponds.

1.1.10 The Court also accepted that the costs incurred to restore the salt ponds in 2001 were an unavoidable consequence of the decision not to produce salt in 2000. However, it also decided to reduce the compensation amount by 50% due to the exceptional rainfall in 2001.

1.1.11 The Court granted the salt producers the amount of €39 466 (£26 800)^{<1>} to cover the legal and other costs incurred and ordered the provisional execution of the judgement.

1.1.12 When this document was issued none of the claimants had appealed against the judgements.

1.1.13 The Director, with the help of the 1992 Fund's French lawyer and the Fund's experts, is examining the judgements to decide whether the 1992 Fund should appeal.

<1> Conversion of Euros into Pounds sterling has been made on the basis of the exchange rate at 7 May 2007 (€ = £0.6797).

1.2. Claim by a Co-operative of salt producers

1.2.1 In May 2007 the Civil Court in Saint Nazaire rendered a judgement in respect of a claim by a Co-operative of salt producers in Guérande who had submitted a claim for commercial loss, loss of image and additional costs incurred as a result of the *Erika* incident.

1.2.2 The claims and the judgements are summarised in the following table:

Item	Amount claimed €	Fund's assessment	Amount granted €
Commercial loss	7 148 164.00	Rejected	Rejected
Loss of image	378 308.12	Rejected	378 041.68
Additional costs incurred	157 692.44	Rejected	21 346.98
Procedural costs (Art 700 civil code)	75 000.00	Rejected	12 000
Total	7 759 164.56	0	411 388.66

1.2.3 The 1992 Fund and Steamship Mutual had considered that salt production had been possible in Guérande in 2000 and that since the Co-operative had a stock of salt available sufficient to maintain sales in 2000, the losses claimed by the Co-operative were not admissible for compensation under the Conventions.

1.2.4 The Court made a similar statement as in the other judgements (paragraph 1.1.7) that it was not bound by the Fund's criteria for admissibility of claims. The Court stated that it was not the Co-operative but the salt producers who actually produced salt, that the claim by the Co-operative could therefore not be for loss of production but for loss of sales and that it was for the Co-operative to prove that it had suffered a loss of profit as a result of the pollution. The Court considered that the Co-operative had had a stock of some 28 611 tons of salt and that it had therefore been able to maintain sales at the normal level, even in the absence of salt production in 2000. The Court decided that the Co-operative had not been able to demonstrate that it had suffered a commercial loss as a result of the *Erika* incident and, for this reason, rejected this item claimed.

1.2.5 With regard to the claim for loss of image, the Court stated that the Co-operative's decision to inform the public that it had a substantial stock of salt available for sale and to run a marketing campaign to inform and reassure consumers had been a reasonable measure to mitigate its loss which had been effective since the Co-operative had not experienced a substantial reduction in sales. For this reason the Court granted the Co-operative the amount of €378 041.68 (£256 950). The Court decided not to grant the amount of €266.44 (£180) corresponding to VAT and non-justified costs.

1.2.6 With regard to the claim for additional costs incurred to minimise pollution damage (costs of monitoring the booms, filtration devices, analysis of the water, etc.), the Court decided that these measures were reasonable and had been taken to prevent pollution damage and granted the amount of €21 346.98 (£14 500). The Court rejected other additional costs incurred in the amount of €136 345.46 (£92 600) since they referred to the time spent by the salt producers defending their interests and coordinating their activities, which were not directly linked to the *Erika* incident.

1.2.7 The Court granted the Co-operative the amount of €12 000 (£8 150) to cover the legal and other costs incurred and ordered the provisional execution of the judgement.

1.2.8 When this document was issued none of the claimants had appealed against the judgements.

1.2.9 The Director, with the help of the 1992 Fund's French lawyer and the Fund's experts, is examining the judgements to decide whether the 1992 Fund should appeal.

2 **Action to be taken by the Executive Committee**

The Executive Committee is invited

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions as regards the issues dealt with in this document as it may deem appropriate.
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