



## INCIDENTS INVOLVING THE 1992 FUND

### ERIKA

#### Note by the Director

<b>Summary:</b>	One additional judgement has been rendered by the French courts. A summary of this judgement is provided.
<b>Action to be taken:</b>	Information to be noted.

### **1 Court judgements in respect of claims against the 1992 Fund**

#### **1.1 Commercial Court in Lorient**

##### *Claim by the owner of a restaurant*

1.1.1 The owner of a restaurant in Guidel-Plage submitted a claim for €43 617 (£30 000)<sup><1></sup> for losses in 2000 and €107 265 (£73 000) for losses in 2001. The 1992 Fund had assessed the losses in 2000 at €29 039 (£20 000) but rejected the claim for 2001 because, in the Fund's view, there was not a sufficient link of causation between the claimed losses in 2001 and the *Erika* incident. The claimant did not agree with the assessments and brought proceedings before the Commercial Court in Lorient.

1.1.2 In a judgement rendered in July 2007 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' in the 1992 Conventions and to apply it in each individual case by determining whether there was a sufficient link of causation between the event and the damage. The Court considered that the *Erika* incident had not had a significant impact on the 2001 tourism season since, according to the studies carried out, the results of 2001 were the consequence of factors unrelated to the oil spill. The Court therefore adopted the Fund's views on the absence of a link of causation and held that the claimant had not proved to have suffered losses beyond the loss of income assessed by the Fund.

1.1.3 When this document was issued, the claimant had not appealed against the judgement.

### **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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<1> The rate of conversion of Euros into Pounds sterling has been made on the basis of the rate at 28 August 2007 (€ = £0.6804).