



## INCIDENTS INVOLVING THE 1992 FUND

### ERIKA

#### Document submitted by France

<b>Summary:</b>	<p>The Paris Criminal Court handed down its judgement in this case on 16 January 2008.</p> <p>The Court pointed to the general corrosion of the ship as one of the causes of the incident. It found Mr Giuseppe Savarese, owner of the Tevere Shipping Company which owned the ship, Mr Antonio Pollara, technical manager of the ship, the Registro Italiano Navale Classification Society (RINA) and Total SA guilty of the offence of pollution. These persons were sentenced to the maximum fines available and ordered to pay €192 million in damages to the civil parties. This compensation is in addition to that paid by the IOPC Funds.</p> <p>The four convicted persons have appealed against the verdict and against the 39 civil actions.</p>
<b>Action to be taken:</b>	<p>Take note of the information provided in this document.</p>

### 1 Introduction

- 1.1 The 1992 Fund is not a party to the criminal proceedings relating to the *Erika* incident. It does, however, follow these proceedings and reports regularly to the Executive Committee on developments through general documents on compensation relating to the *Erika* (cf for example document 92FUND/EXC.38/5).
- 1.2 However, given the scope of the proceedings (15 accused, 114 civil actions) and the complexity of the judgement handed down, and to ensure that the Committee is properly and fully informed, France considered it necessary to prepare a separate information document reporting as faithfully as possible the content of the judgement handed down by the Paris Criminal Court on 16 January 2008.

### 2 The accused and the charges

- 2.1 The 15 accused were: the master of the ship, the holder of shares in the Liberian companies which were shareholders of the Maltese company Tevere Shipping which owned the ship, the technical manager of the ship, two officials of different companies which time-chartered the ship, the Italian classification society RINA and one of its officials, three companies of the Total Group (Total SA, and two subsidiaries, Total Transport Corporation (TTC), voyage charterer of the *Erika*, and Total Petroleum Services LTD (TPS), the agent of TTC), the Director of Legal Affairs of the

trading/shipping department of Total, all of whom were charged with pollution, endangering others, or complicity in one of these offences, and the four State officials involved in the management of the incident, were charged with deliberate refusal to take action to prevent the incident.

- 2.2 Of the various charges, only that of pollution was finally admitted by the Court.

### **3 French law was held to be in conformity with the MARPOL 73/78 Convention**

- 3.1 The Court first had to deal with the question of the conformity of French pollution law with the provisions of the International Convention for the Prevention of Pollution from Ships, 1973 and the Protocol of 1978 related thereto (MARPOL 73/78 Convention).

- 3.2 At the date of the *Erika* incident, the offence of maritime oil pollution was defined as follows (article 8 of Law n° 83-583 of 5 July 1983):

'Imprudence, negligence or failure to comply with laws and regulations, resulting in a maritime casualty as defined in the Brussels Convention on the Right of Intervention on the High Seas of 29 November 1969, is punishable in the person of the master or the person responsible for the conduct or operation which caused such a casualty or who had not taken the necessary measures to prevent it, when the casualty resulted in pollution of territorial waters, inland waters or navigable waterways up to the limit of maritime navigation.

The penalties laid down in the preceding paragraph are applicable to the owner, the operator or their legal representative or *de facto* directors in the case of a legal person or any person other than the master or deck officer exercising, by law or *de facto*, a power of control or direction in the management or operation of the ship or platform, when the said owner, operator or person is the cause of pollution as defined in the first paragraph.'

- 3.3 This provision was held to be compatible with the MARPOL Convention in the sense that its purpose was not to punish a discharge of oil in the meaning of that Convention but pollution resulting from a maritime casualty as defined in the Brussels Convention on the Right of Intervention on the High Seas of 29 November 1969<sup><1></sup>. The pollution resulting therefrom, according to the Court, was different from a discharge resulting from an accident and envisaged, in another legal context, by the MARPOL Convention. This distinction, moreover, was established by the law itself which devoted specific articles to illegal discharges, passed in application of MARPOL. Thus, article 8 of the Law of 5 July 1983 provided a different offence from those laid down in application of that Convention.

### **4 The four accused convicted of pollution**

- 4.1 Mr Savarese, owner of shares in the Liberian companies which are shareholders of Tevere Shipping, and Mr Pollara, technical manager of the ship, were held to be responsible for the general corrosion of the ship. They committed an offence by deliberately and jointly, for reasons of cost, deciding to reduce the work carried out during the ship's five-yearly inspection, to such an extent that they could not have been unaware that it endangered the safety of the ship. As both of them exercised a power of control of management of the ship, they fell within the scope of the offence laid down in the Law of 5 July 1983.
- 4.2 The Court also found the classification society, RINA, guilty of having renewed the *Erika's* classification certificate under the pressure of commercial constraints and without carrying out thickness measurements in accordance with the standards of the profession, when areas suspected of substantial corrosion were an obvious sign that the state of the ship's structure gave cause for

---

<sup><1></sup> Article 2 defines a maritime casualty as 'collision, sinking, stranding or other incident of navigation, or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to a ship or cargo'.

concern. By so doing, the society's inspector committed an offence of imprudence which was one of the causes of the wreck and led to the maritime casualty.

- 4.3 Furthermore, the Court refused to extend to the classification society the benefit of the exception of immunity from the jurisdiction granted to the Maltese State, of which it was the agent for the issue of statutory and safety certificates. The Court recalled in that regard that the activity of classification societies, when it consisted of issuing classification certificates, at the request of the owner and in performance of a contract with that owner, was an activity of a private nature.
- 4.4 Lastly, the Court found that Total SA had committed an offence of imprudence by accepting, in the course of vetting, ie the activity of inspection of oil tankers to verify their safety, that the *Erika* should be voyage chartered.
- 4.5 The judgement recalled that heated black products (the *Erika's* cargo), which are both the most corrosive for ships and the most polluting for the environment, were, according to common practice, transported in the oldest ships. The Court emphasised that the risk-taking inherent in maritime transport ceased to be acceptable and became an offence of imprudence when the perils resulting from the conditions of operating an oil tanker, even one in possession of all its certificates, were compounded by the age of the ship, lack of regular technical management and maintenance, the habitual mode of charter chosen and the nature of the product transported. Those were all described as clearly identified circumstances, each having a real impact on safety, at the time of the acceptance of the *Erika* by the Total SA vetting service. The Court therefore found that, taken together, those circumstances should have been conclusively regarded as prohibitive for the transport of cargoes as polluting as oil products, so-called black products, such as fuel-oil n° 2.
- 4.6 The Court did not accept the argument that Total's vetting practices were the same as those of other oil companies. According to the Court, those practices were equally reprehensible.
- 4.7 The offence of imprudence committed by Total SA had a causal role in the incident since if the ship had been rejected by the vetting service, it could not have been chartered. Consequently, it had caused the maritime casualty.
- 4.8 The four accused persons were convicted of the criminal offence of pollution and sentenced to fines of €375 000 (Total SA and RINA) and €75 000 (Mr Savarese and Mr Pollara). **All the other accused were acquitted.**

## **5 The civil action was held to be admissible under the International Convention on Civil Liability for Oil Pollution Damage (1992 CLC)**

- 5.1 One of the accused contested the admissibility of the civil action arguing that the criminal court did not have general competence of compensation of victims of offences and that it could only compensate damages which were a direct consequence of the commission of an offence, and not those for which compensation was governed by the special rules of an international convention. The International Convention on Civil Liability for Oil Pollution Damage (1992 CLC), set out specific rules on civil liability relating to damages for oil pollution and exempted from liability a list of persons set out in its Article III.4.
- 5.2 On this question, the Court held that the action for compensation opened by the Convention which, by its substance and the rules set out for bringing such actions, was different from damages normally available to the civil parties, did not exclude any other action with the same purpose and only fell outside the jurisdiction of national judicial authorities if it was directed against the natural or legal persons of which the Convention gave a **restrictive list**.
- 5.3 The Court held, therefore, that Mr Savarese was neither the owner of the ship nor the employee or agent of the owner, since the ship was owned by the Maltese company Tevere Shipping. Consequently, he could not benefit from the exemption from liability contemplated in the

Convention. Likewise, Mr Pollara and RINA did not fall into the categories envisaged by the Convention.

- 5.4 Lastly, concerning Total SA, the judgement emphasised that the company was not the trip charterer of the *Erika*, since it had been chartered by a separate legal person, its subsidiary TTC, and neither was its TTC's agent in that charter. Thus, Total SA was excluded from the scope of the rule in the Convention and could be ordered to pay compensation to the civil parties.

## **6 Recognition of damages resulting from damage to the environment**

- 6.1 Some civil parties, in particular the local authorities, wanted to make the *Erika* trial a legal first in France for reparation of damage to the environment.
- 6.2 The Court recognised the principle of such reparation in favour of some local authorities and associations, while setting a limit on the possibility of benefiting from it. According to the Court, only local authorities which were granted special powers under the law conferring particular responsibility on them for the protection, management and conservation of a territory could seek reparation for damage caused to the environment in that territory. Among French local authorities, the Court held that only departments enjoyed such powers conferred by the law. However, only the department of Morbihan had been able to show actual damage to 662 hectares of sensitive areas for which it was responsible.
- 6.3 The judgement also recognised the right of accredited environmental protection associations to claim compensation, not only for the direct or indirect material or moral damage caused to the collective interests which it was their purpose to defend, but also the damage to the environment which directly or indirectly violated the collective interests which they had a statutory mission to safeguard. In that respect, only the League for the Protection of Birds (LPO) was entitled to compensation by virtue of its role and the association's investment in that field.

## **7 Compensation awarded to the civil parties**

- 7.1 The four accused persons were ordered to pay jointly the sum of €192 123 400 to 70 civil parties.
- 7.2 This sum covers some €164 million of compensation (of which €153 million to the French State) in respect of material damages suffered, after deduction of the sums already paid by the IOPC Fund under this heading. The rest of the compensation consisted of €26.5 million awarded to the local authorities affected (regions, departments, municipalities) in respect of the damage to their reputation and their brand image, €1.3 million awarded to the department of Morbihan and the League for the Protection of Birds for damage to the environment and finally €375 000 to compensate the moral damage to some twenty associations, businesses and individuals.
- 7.3 The following table lists the compensation awarded by the Court under the various headings:

<b>Civil parties (number of civil parties concerned)</b>	<b>Material damages</b>	<b>Damage to reputation and brand image</b>	<b>Moral damages</b>	<b>Damages for harm to the environment</b>	<b>Total</b>
	€	€	€	€	€
<b>French State</b>	153 808 690				<b>153 808 690</b>
<b>Regions (3)</b>	4 304 105	7 000 000			<b>11 304 105</b>
<b>Departments (4)</b>	4 519 018	4 000 000		1 015 067	<b>9 534 084</b>
<b>Municipalities (40)</b>	659 281	15 526 000			<b>16 185 281</b>
<b>Associations (11)</b>	593 640		330 000	300 000	<b>1 223 640</b>
<b>Other (11)</b>	22 023		45 500		<b>67 598</b>
<b>Total</b>	<b>163 906 833</b>	<b>26 526 000</b>	<b>375 000</b>	<b>1 315 067</b>	<b>192 123 400</b>

## **8 The case will be heard on appeal**

- 8.1 The four convicted persons have appealed against the judgement. The Prosecution Service was also appealing against the acquittal of Total Transport Corporation (TTC) and Total Petroleum Services LTD (TPS). Thirty-nine civil parties, who are contesting their lack of compensation or the amount, have also filed appeals against the judgement. Some of those appeals also concern the acquittal of the companies TTC and TPS and the acquittal of two persons accused as the time charterers of the ship.
- 8.2 As the French State obtained full compensation for the damages suffered, as assessed after deduction of the sums received from the IOPC Fund, it did not file an appeal. It should also be noted that no appeal was filed against the acquittal of the four State officials accused and the judgement concerning them thus became final.

## **9 Action to be taken by the Executive Committee**

The Executive Committee is invited to take note of the information contained in this document.

---