



International Oil Pollution
Compensation Funds

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INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

AGIA ZONI II

Note by the Secretariat

Objective of document:

To update the 1992 Fund Executive Committee on the latest developments regarding this incident.

Summary:

The product tanker *Agia Zoni II*, (1 597 GT, built 1972) sank at anchor, in good weather conditions at 0200 hours, on 10 September 2017, close to Salamina island just outside^{<1>} the northern part of the designated Piraeus anchorage area in the Saronic Gulf. The vessel settled at a depth of approximately 35 metres with about 15 metres clearance above the hull. There were no casualties. The investigations into the cause of the incident have not yet been published.

The vessel was laden with approximately 2 194 metric tons (mt) of heavy fuel oil, and 370 mt of marine gas oil (MGO). The vessel also carried approximately 15 mt of bunkers of MGO, 300 litres of lubricants and 200–300 litres of chemicals. It is believed that approximately 500 tonnes of oil were released upon sinking or shortly thereafter.

Large slicks of oil drifted in an easterly direction towards the mainland surrounding Piraeus and Athens, where it subsequently stranded, contaminating approximately 20–25 kilometres of the mainland and 3–4 kilometres of Salamina island. Clean-up operations were commenced very shortly after the incident, involving at times over 400 personnel, and continued through autumn 2017, concluding at the end of 2017.

In November 2017, the wreck of the *Agia Zoni II* was lifted and towed to the salvor's shipyard at Salamina island and was arrested by the Public Prosecutor pending his investigation into the cause of the incident. Subsequently, the Public Prosecutor insisted that the wreck be cleaned before the investigation of the wreck take place. From 23 March 2018 to 27 April 2018, the wreck was cleaned by two clean-up contractors in preparation for the investigation by the Public Prosecutor.

The wreck was drydocked on 21 June, where, *inter alia*, samples of the hull plating were taken. The wreck was refloated on 25 June 2018 and is currently at the salvor's shipyard, where it remains the subject of a dispute between the salvors and shipowner regarding its condition at redelivery. The salvors have requested the removal of the cleaned wreck from their shipyard.

^{<1>} The Piraeus Central Harbour Master certified the wreck position as 37° 55.9N and 023° 34.05E, and thus outside of Piraeus Port S.A. jurisdiction.

Recent developments:

The 1992 Fund has received 335 claims amounting to €86.49 million and USD 175 000. The 1992 Fund's experts have currently assessed 153 claims and paid some €10.54 million in compensation.

The 1992 Fund has closely followed the investigations into the cause of the incident, but no reports have yet been made public. In late 2018, there were widespread reports in the Greek media regarding the conclusion of the technical report ordered by the Judge investigating the cause of the incident. The report is said to conclude that the incident was caused by an explosion, which led the vessel to begin listing and to water ingress through an open porthole, allowing water to flood the engine room, causing a loss of stability and sinking. At present, it is understood that the report does not conclude what caused the explosion. When the report is officially released, the 1992 Fund will forward it to its experts for analysis.

In addition, further media reports have stated that the report prepared by the Third Marine Accident Investigation Council, which was handed over to the Prosecutor's office in Piraeus recently, concludes by finding that the incident was caused by the 'intentional acts and omissions and negligence' of specific persons and companies. The report is said to state that the sinking of the *Agia Zoni II* resulted from the malicious act of opening the sea-ballast valves that resulted in the flooding of the ship with seawater, leading to its sinking. The oil leak which followed is said to have resulted from cargo escaping from the cargo tanks or cargo inspection hatches, which had been sealed in the refinery at loading, but which had been opened afterwards while the ship was at the anchorage area.

The 1992 Fund is awaiting a copy of the report by the Third Marine Accident Investigation Council.

Action to be taken: 1992 Fund Executive Committee

Information to be noted.

1 Summary of incident

Ship	<i>Agia Zoni II</i>
Date of incident	10 September 2017
Place of incident	Saronic Gulf, Greece
Cause of incident	Sinking—circumstances under investigation
Quantity of oil spilled	Unknown but estimated to be approximately 500 tonnes
Area affected	3–4 km of the coastline of Salamina island and 20–25 km of the coastline south of Piraeus port and Athens, Saronic Gulf, Greece
Flag State of ship	Greece
Gross tonnage	1 597 tonnes
P&I insurer	Lodestar Marine Limited
CLC limit	SDR 4.51 million (€5.41 million) ^{<2>}
STOPIA/TOPIA applicable	N/A
CLC + Fund limit	SDR 203 million (€247.32 million) ^{<3>}
Legal proceedings	Limitation proceedings have been commenced.

^{<2>} Based on the limitation fund figure established at the Piraeus Court of First Instance in October 2017.

^{<3>} Based on the exchange rate as at 14 January 2019 of SDR 1 = €1.218320.

2 **Background information**

Background information is provided in detail in the [online *Agia Zoni II* incident report](#).

3 **Applicability of the Conventions**

- 3.1 Greece is Party to the 1992 Civil Liability Convention (1992 CLC) and the 1992 Fund Convention.
- 3.2 Since the *Agia Zoni II* (1 597 GT) is below 5 000 units of tonnage, the limitation amount applicable under the 1992 CLC is SDR 4.51 million (€5.41 million). The vessel was insured with Lodestar Marine Limited, a fixed premium insurance provider based in the United Kingdom.
- 3.3 The total amount available for compensation under the 1992 Civil Liability and Fund Conventions is SDR 203 million (€244.80 million). Since the total amount of damages caused by the spill is likely to exceed the limitation amount applicable under the 1992 CLC, the 1992 Fund will be liable to pay compensation to the victims of the spill.
- 3.4 Greece is also a Party to the Supplementary Fund Protocol. The total amount available under the Supplementary Fund Protocol is SDR 750 million, including the amounts payable under the 1992 Civil Liability and Fund Conventions. It is, however, very unlikely that the damages caused by the spill will exceed the amount available under the 1992 Fund Convention, and thus this incident is not expected to involve the Supplementary Fund.

Insurance details

- 3.5 The *Agia Zoni II* was insured for oil pollution risks and wreck removal with a fixed premium insurer, which was not part of the International Group of P&I Associations (International Group). The ship did not have any hull insurance. The insurance policy between the shipowner and the insurer contains a limit of liability of €5 million. Nevertheless, the insurer indicated that it would honour the blue card it issued, which has a limit of SDR 4.51 million (€5.41 million). The insurer has since established a limitation fund for this amount by lodging a bank guarantee with the Court.
- 3.6 The policy of insurance, with an overall limit of €5 million, appears to be insufficient, since it covers all legal liabilities, not only oil pollution liabilities. It is possible that there is an under-insurance situation which will have to be addressed in the future.
- 3.7 The 1992 Fund requested a copy of the insurance policy from the insurer, but this was not provided. The insurer stated that it had offered the shipowner additional insurance to raise its cover, but that the shipowner had indicated that it would 'self-insure' for any additional liabilities. However, it does not appear that the shipowner obtained additional insurance over that provided by the insurer.

Greek Law – wreck removal

- 3.8 Under Greek Law^{<4>}, any ship sailing to or from a Greek port or terminal must be insured for the obligations of wreck removal towards the Greek State, up to the limits of liability specified within the Convention on Limitation of Liability for Maritime Claims (LLMC 76/96), which amounts to SDR 1 million (€1.25 million). However, it does not appear that the owner obtained the wreck removal liability insurance, as it indicated it would.
- 3.9 Pursuant to Greek Law, the Greek State has a right of direct action against the insurer for wreck removal.

<4> Article 7 of Law 2881/2001 on wreck removal.

4 Claims for compensation

- 4.1 The 1992 Fund has received 335 claims amounting to €86.49 million and USD 175 000. The 1992 Fund has approved 75 claims and paid some €10.54 million in compensation. The 1992 Fund and its experts are continuing to visit claimants, assess the claims submitted to date and to gather further information regarding the incident from a wide range of sources in order that compensation can be paid as soon as possible.
- 4.2 Further details of the claims received and payments made by the 1992 Fund are provided in the table below:

Claims submitted to the 1992 Fund (€)

Claims submitted to the 1992 Fund						
Claim Category	Claimed		Approved		Paid by Fund	
	No.	Amount (€)	No.	Amount (€)	No.	Amount (€)
Clean-up	26	77.24 million	10	10.32million	8	10.03 million**
Environmental Monitoring	5	100 303	4	95 963	4	95 963
Fisheries (incl. wholesalers)	142	4.26 million	35	33 709	19	26 330
Property	112	811 113	9	24 950	8	23 788
Tourism	49	3.89 million	17	362 453	15	353 149
Other	1	90 000	0	0.00	0	0.00
Total	335***	86.49 million*	75	10.84 million	54	10.54 million

* A number of fisheries, property and tourism claims include inadmissible claims for 'moral damages'.

** Several advance payments have been made pending full assessments of the claims.

*** Further substantial claims are awaited from the Hellenic Coastguard, and a large tourist resort.

- 4.3 In addition to the claims set out above, the 1992 Fund has received a tourism claim for USD 175 000 which has been rejected. The 1992 Fund's Claims Submission Office has received enquiries from over 120 other potential claimants in the fisheries and tourism sectors, although it remains to be seen whether these will materialise into valid claims against the 1992 Fund.

- 4.4 The 1992 Fund has already made advance payments to several of the clean-up contractors which incurred significant expenditure responding to the incident, and full compensation payments to various other claimants who suffered damages to property or the fisheries and tourism sectors. Many claimants have claimed ‘moral damages’ which are not admissible under the 1992 Civil Liability and Fund Conventions.

The claims submitted by the clean-up contractors including wreck removal expenses

- 4.5 Twenty-six claims amounting to €77.24 million have been submitted to the limitation fund and to the 1992 Fund by the clean-up contractors relating to (1) oil removal from the wreck; (2) shoreline clean up; (3) preparation for, and actual, wreck removal; (4) cleaning of the wreck subsequently in order for the Public Prosecutor’s investigation to be conducted; and (5) caretaking of the wreck following cleaning. Together the claims cover the period from 10 September 2017 when the *Agia Zoni II* sank, to 31 December 2018.

Oil removal from wreck

- 4.6 After the hatches and vents on the sunken vessel were sealed, the salvor commenced hot-tapping operations to remove the oil still laden on board the sunken vessel. Throughout September 2017, the salvor conducted pumping operations to remove oil from the wreck. The quantity of fuel oil/water mixture eventually pumped out of the *Agia Zoni II* during the pumping and flushing operations is estimated at approximately 2 220 mt.
- 4.7 The salvor used direct pumping and hot-tapping techniques to seal the cargo tanks and leaks in order to pressurise the tanks within the wreck, to force any trapped oil to the surface for collection.

Shoreline clean up

- 4.8 Approximately 4 kilometres of the coastline of Salamina island, and 20–25 kilometres of the heavily-populated coastline south of Piraeus port and Athens were contaminated, including the oiling of some 300 small pleasure craft berthed in various marinas along the respective coasts.
- 4.9 The clean-up contractors mobilised some 400 personnel to conduct clean-up operations, which continued on shore and at the wreck site (to clean the seabed of debris), with operations scaled down to patrolling once the oil removal operations were completed in December 2017/January 2018. Additional beach material replacement operations continued through January and February 2018 and thereafter sporadic patrols along some beaches were made at times of heavy weather to check that no further recontamination took place.
- 4.10 The Fund’s experts are assessing the shoreline clean up claims, but their efforts have been hampered by the fact that the contractors have in general submitted lump-sum claims without specifying precisely when and where the personnel and equipment were used in the clean-up operations.

Preparation for and actual wreck removal

- 4.11 On 29 September 2017, the Piraeus Port Authority ordered the shipowner to remove the wreck within 30 days (i.e. by 29 October 2017). On 13 October 2017, the salvors declared all cargo and diesel tanks on the wreck to be free of oil pockets. On the same day, a new Order was issued by the Authority to the salvors to proceed with the wreck removal “at no cost to the Greek State”.

- 4.12 The Order issued by the Authority made reference to existing Greek legislation^{<5>}, stating that the presence of a shipwreck in the sea constituted a burdening factor for the maritime environment that deteriorated its features and constituted a contingent source of pollution, since, even if the bunkers and lubricants had been pumped out, remains of these substances were gradually released over time and due to weather conditions. The Order also stated that ‘the existence of a shipwreck constituted a hazardous feature for the users of the wider sea area, and noted that the salvors’ plans for cleaning the wreck had noted that the remaining amount of oil in the cargo tanks was hard to be measured at this time...’
- 4.13 The wreck was lifted by 29 November 2017, however, at the time of lifting the wreck, further oil escaped from the wreck site^{<6>} and subsequently re-oiled parts of the mainland surrounding Piraeus, necessitating further clean-up operations. It is understood that due to difficulties of access, the salvor had not hot-tapped all the bunker tanks, and thus it could reasonably be assumed that the full quantity of bunkers and lubricants remained inside the wreck.
- 4.14 On 30 November 2017, the refloated wreck was towed to the salvor’s shipyard on Salamina island and was berthed awaiting inspection by the Public Prosecutor. For precaution, a floating boom was placed around the vessel.

Cleaning of wreck for the purpose of the Public Prosecutor’s investigations

- 4.15 After the wreck was lifted and taken to the salvor’s shipyard, the vessel was placed under arrest by the Public Prosecutor, and the salvors were subsequently appointed as the party holding possession of the vessel on behalf of the authorities (sequestrator). According to the authorities, once refloated, the *Agia Zoni II* needed to be immediately towed to a safe location where she would not represent a threat to the environment or navigation. The vessel was towed to the salvor’s shipyard under the instruction of the authorities and the Public Prosecutor who arrested the *Agia Zoni II* in order to carry out an investigation into the cause of the sinking.
- 4.16 Claims have been submitted against the 1992 Fund by the clean-up contractors and salvors for cleaning the wreck under the instruction of the Public Prosecutor.

Caretaking of the wreck following cleaning

- 4.17 The wreck remains at the salvor’s shipyard and has become the subject of a dispute between the shipowner and the salvor. The shipowner claims that the wreck is not in the redelivery condition agreed by the salvor prior to lifting the wreck. The salvor disputes this and states that its contractual obligations to the shipowner ended as of 30 November 2017, when the wreck was transported to a safe harbour after refloating.
- 4.18 The salvor has submitted a claim against the 1992 Fund for the time period from 1 March 2018 to 31 December 2018, covering, *inter alia*, the cleaning of the wreck (which took place in March and April 2018), and the subsequent time period ‘caretaking’ and monitoring the cleaned vessel at the salvor’s shipyard until the end of 2018.

5 Limitation proceedings

- 5.1 The Limitation Fund Administrator is currently provisionally assessing the claims which have been submitted to the limitation fund, and the 1992 Fund notes that broadly speaking, there is a close

<5> The introductory report for law 2881/2001 and the minutes of the permanent commission for production and trade of the Greek Parliament.

<6> Fuel was seen to be leaking from water ballast tank no. 4 (port). All other ballast tanks and accessible spaces were confirmed to be free from oil by the divers/contractors.

correlation between his assessments and those of the 1992 Fund's experts. The 1992 Fund has offered its expertise to the Limitation Fund Administrator in relation to any issues of applicability under the Conventions. By 5 May 2018, (the date by which claims against the limitation fund were to be filed) the Limitation Fund Administrator had received 84 claims, totalling €94.4 million. Several claims have been filed at the limitation fund, which have not been filed with the 1992 Fund. In addition, the 1992 Fund has continued to submit its subrogated claims against the limitation fund, which entails a court hearing.

- 5.2 Once the Limitation Fund Administrator has completed his provisional assessments of the claims submitted to the limitation fund, he will publish the provisional assessments, at which point every claimant with a claim against the limitation fund may accept or appeal the provisional assessment. There is therefore a possibility that the legal proceedings arising from claims submitted against the limitation fund may take considerable time to resolve, albeit that many of the claimants who have filed claims with the 1992 Fund as well as the limitation fund, will receive their compensation from the 1992 Fund.

6 Investigation into the cause of the incident

- 6.1 In addition to considering the crew's witness statements, the classification, survey and drydocking arrangements of the vessel, the 1992 Fund has continued to monitor the investigations into the cause of the sinking conducted by the Public Prosecutor, and the Hellenic Bureau for Marine Casualties Investigation (HBMCI) which operates independently from the judicial authorities (see document [IOPC/APR18/3/7](#), paragraphs 7.7–7.8).

Investigation by the Technical University of Athens

- 6.2 In late 2018, there were widespread reports in the Greek media regarding the conclusion of the technical report, ordered by the Judge investigating the cause of the incident. The report has not yet been publicly released but is said to conclude that the incident was caused by an explosion (cause undetermined), which caused the vessel to list and trim by the stern, leading to water ingress through an open porthole, allowing water to enter the vessel which eventually ended up flooding the engine room, causing a loss of stability and sinking. The 1992 Fund has requested a copy of the technical report when it is officially released.

Investigation by Public Prosecutor into the terms of the clean-up contracts

- 6.3 In July 2018, the 1992 Fund was informed that the Public Prosecutor was investigating the terms of the granting of the antipollution services agreement to the clean-up contractors. To date, however, no further details have been provided and the 1992 Fund and its lawyers await further developments which will be reported in due course.

Investigation by the Third Marine Accident Investigation Council (ASNA) for the Public Prosecutor

- 6.4 The 1992 Fund understands that the investigation conducted by the Third Marine Accident Investigation Council (ASNA) for the Public Prosecutor has been concluded. The 1992 Fund awaits its publication.

Media reports

- 6.5 Given the impact of the incident upon the Piraeus coastline, there have been many media reports in the Greek press regarding the conclusion of the investigations by the Greek authorities. Several such media reports have stated that the conclusion of the investigation conducted by ASNA, was that the sinking of the *Agia Zoni II* was the result of sabotage.

- 6.6 Some media reports state that the sinking of the *Agia Zoni II* resulted from the malicious acts of opening of the sea-ballast valves^{<7>} that resulted in flooding the ship's hull with seawater leading to a loss of stability and sinking. Other newspaper articles have commented upon the delay in closing the cargo tanks and cargo inspection hatches located on the deck of the ship, which added to the pollution.
- 6.7 Among other criticisms, the newspaper articles also comment adversely upon the failure of the two crew members onboard the vessel to report the incident to the authorities or to broadcast a Mayday distress signal to any ships nearby, asking for assistance, and also blame the shipowner for failing to communicate with the port authorities, the operations room of the Ministry of Mercantile Marine and the captains of the tugboats and other vessels, showing indifference to the fact that his ship was sinking, loaded with oil, outside the port of Piraeus.
- 6.8 Other media reports allege that the ASNA report concludes by stating that 'none of the above sought to save the ship; on the contrary it seems that the objective was to allow the ship to sink undisturbed and helpless. This demonstrates that it was a pre-planned objective and such development should not be disturbed'. The ASNA report allegedly also comments that 'the interests served in this case are clearly evident from the economic benefit obtained by companies assigned by the shipowner to manage the anti-pollution and de-pollution operations'.

7 Director's considerations

- 7.1 The Director notes that the results of the investigations conducted by ASNA for the Public Prosecutor, the Hellenic Bureau for Marine Casualties Investigation (HBMCI), and the Public Prosecutor regarding the granting of the clean-up contracts, are still awaited and until these are officially published, it would be wrong to speculate on the cause of the incident. However, if as is suggested in numerous media articles, the cause of the incident was an explosion or malicious act, a number of possibilities as to the cause of the sinking would require further consideration.

Damage caused by mechanical failure, build-up of gas or other means

- 7.2 Although the Fund's experts have not yet received the conclusions of the technical report, they are of the preliminary view that a natural explosion caused by mechanical failure or build-up of gas, appears unlikely due to the location of the source of the explosion near the water ballast tanks, away from any natural sources of materials of a combustible or explosive nature. They are presently unable to comment on whether the explosion was caused by any other means and their analysis will have to wait until the technical report is published officially before they are able to comment further.

Damage caused by the act of the owner

- 7.3 If, following the conclusion of all the investigations by the Greek authorities, it was proved that the pollution damage resulted from the owner's personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result, then the owner would not be able to limit its liability. The 1992 Fund's lawyers are currently investigating the assets of the shipowner with a view to determining whether in such circumstances, it would be able to pay the claims submitted.
- 7.4 In addition, if the owner was found not to be entitled to limit its liability, the Fund would have to commence a recourse action against the shipowner for all the sums of compensation arising from this incident which it had paid in excess of the insurer's limit of liability deposited in court.

<7> Which had been tied shut upon departure following loading at the oil terminal

Damage caused by a third party

- 7.5 Since under Article 4(3) of the 1992 Fund Convention there shall be no exoneration of the Fund with regard to preventive measures, practically, in such circumstances where the Fund could prove that the pollution damage resulted wholly or partially either from an act or omission done with intent to cause damage by the person who suffered the damage or from the negligence of that person, it would still remain liable for the costs of preventive measures (i.e. clean up costs).
- 7.6 The Director will continue to follow the investigations into the cause of the incident and will report to the Executive Committee at future sessions.

Wreck removal expenses

- 7.7 With regard to the wreck removal expenses, due to the presence of an unknown quantity of oil on board the vessel and the possibility of it being released even after pumping operations had concluded, it could be argued that the decision to lift the wreck for environmental reasons and in order to remove any potential future pollution threats, was necessary^{<8>}.
- 7.8 Furthermore, it could be argued that it was necessary to remove the wreck as it was likely to constitute a hazard to navigation given its location at the edge of the main shipping anchorage area for the Port of Piraeus. Even if the wreck had been totally sealed, the possibility of a further release of oil due to impact by another vessel could not be ruled out.
- 7.9 The Fund will apportion the costs of the wreck removal to reflect the fact that it constituted both a threat to the environment and a hazard to navigation, and the Fund's experts have been instructed to assess the claims accordingly.
- 7.10 In previous incidents, the cleaning of the wreck has been considered an admissible claim if it constituted preventive measures^{<9>}, so the 1992 Fund's experts have been instructed to assess the claims with a view to determining the cleaning which was conducted for the purpose of pollution prevention which is admissible under the Conventions, and that which was done for the purposes of the criminal investigation, which is considered to be inadmissible.
- 7.11 A claim has been submitted by the salvors for the costs of caretaking of the wreck post-cleaning while the future of the salvaged wreck is determined. Given that the salvors were appointed as the party holding possession of the vessel on behalf of the authorities, and no aspect of the claim amounts to pollution prevention, in the Director's view, this claim is inadmissible.

8 Action to be taken1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.

<8> At the time of lifting the wreck, oil was seen to be leaking from the No.2 Water Ballast Tank.

<9> In the *Volgoneft 139* incident the shipowner submitted a claim, totalling RUB 27.7 million, for the cost of cleaning the aft section of the *Volgoneft 139* and for disposal of part of the oil collected from the wreck. The Arbitration Court of Saint Petersburg and Leningrad Region rejected this claim for considering that a defendant could not also be a claimant in the limitation proceedings. However, since this claim was related to preventive measures, the claim was assessed by the 1992 Fund and settled out of court at RUB 8.8 million.