



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:	<p>The product tanker <i>Agia Zoni II</i>, (1 597 GT, built 1972) laden with approximately 2 194 metric tons (mt) of heavy fuel oil, and 370 mt of marine gas oil (MGO)^{<1>}, sank at anchor, in good weather conditions at 0200 hours, on 10 September 2017, close to Salamina island just outside^{<2>} the northern part of the designated Piraeus anchorage area in the Saronic Gulf, Greece. The vessel settled at a depth of approximately 35 metres with about 15 metres clearance above the hull. There were no casualties.</p> <p>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.</p> <p>The results of an investigation into the cause of the incident conducted for the Public Prosecutor, and another by the Technical University of Athens have concluded, but a number of other investigations, including that of the granting of the clean-up contracts to the clean-up contractors, are still awaited.</p> <p>In November 2017, the wreck of the <i>Agia Zoni II</i> 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 took 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.</p> <p>The wreck was drydocked on 21 June 2018, where, <i>inter alia</i>, samples of the hull plating were taken. The wreck was refloated on 25 June 2018 and is currently at the salvor's</p>

<1> The vessel also carried approximately 15 mt of bunkers of MGO, 300 litres of lubricants and 200–300 litres of chemicals.

<2> 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:

shipyard, where it remains the subject of a dispute between the salvors and shipowner regarding its condition at redelivery.

Limitation Fund claims evaluation procedure

The Limitation Fund Administrator has concluded the claims evaluation procedure of the claims filed at the Limitation Court (totalling EUR 94.4 million) by publishing his provisional assessments with an assessed figure totalling EUR 45.45 million. Every claimant with a claim against the Limitation Fund may accept or appeal the provisional assessment by the end of September 2019.

Claims assessment

The assessment of the 373 claims filed against the 1992 Fund has continued, with 300 claims approved and compensation payments totalling EUR 11.27 million paid. The 1992 Fund subrogated the claims it had paid before 5 May 2018 against the Limitation Fund before the deadline for filing claims expired. The assessments of the main clean-up claims are expected to be completed by November.

Investigation into cause of incident

The Technical University of Athens, School of Naval Architecture and Marine Engineering published its report into the cause of the incident, concluding that the *Agia Zoni II* sank after an explosion which flooded the starboard ballast tanks, causing adverse heel and trim, leading to seawater flooding the engine room and loss of stability and sinking.

Another investigation has been conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor which has concluded that the sinking of the *Agia Zoni II*, could have only been caused due to ballasting (by the opening of the sea water ballast valves) and that the escape of oil from the *Agia Zoni II* was attributed to the undue opening of the cargo tank seals or manifolds, which could only have been done from on board the *Agia Zoni II*.

Legal proceedings

In July 2019, the 1992 Fund was served with legal proceedings filed at the Piraeus Court of First Instance, by two of the clean-up contractors for the balance of their unpaid claims amounting to EUR 30.26 million and EUR 24.74 million respectively, after deducting the advance payments made so far.

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	10.09.2017
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 GT
P&I insurer	Lodestar Marine Limited
CLC limit	SDR 4.51 million (EUR 5.41 million) ^{<3>}
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million (EUR 247.89 million) ^{<4>}
Legal proceedings	<p>Limitation proceedings have been commenced by the insurer. The Limitation Fund Administrator has published the provisional assessment of claims filed at the Limitation Fund.</p> <p>In July 2019, the 1992 Fund was served with legal proceedings by the lawyers acting for the two main clean-up contractors, who have filed claims amounting to EUR 30.26 million and EUR 24.74 million respectively.</p>

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 (EUR 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 (EUR 247.89 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.

^{<3>} Based on the Limitation Fund figure established at the Piraeus Court of First Instance in October 2017.

^{<4>} Based on the exchange rate as at 30 June 2019 of SDR 1 = EUR 1.22115.

Insurance details

- 3.5 The *Agia Zoni II* was insured for oil pollution risks and wreck removal with Lodestar Marine Limited, 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 EUR 5 million. Nevertheless, the insurer indicated that it would honour the blue card it issued, which has a limit of SDR 4.51 million (EUR 5.41 million). The insurer has since established a Limitation Fund for EUR 5.41 million by lodging a bank guarantee with the Court.
- 3.6 The policy of insurance, with an overall limit of EUR 5 million, is insufficient since it covers all legal liabilities, not only oil pollution liabilities. There is, therefore, an under-insurance situation which will have to be addressed.
- 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^{<5>}, 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 (EUR 1.22 million). However, based on the information provided, it does not appear that the shipowner obtained the wreck removal liability insurance, as he indicated he would.
- 3.9 Pursuant to Greek law, the Greek State has a right of direct action against the insurer for wreck removal.
- 3.10 In addition, Article 2 of Greek Law no. 2881/2001 lists the criteria required to be considered by the shipowner for wreck removal as follows:
- (1) Imposition of 'danger for sea navigation in an area of port, canal or waterway'; or
 - (2) obstruction of mooring, anchoring, berthing, use of quays and their function; or
 - (3) contamination or threat of contamination to the environment.
- 3.11 It is understood that these criteria were considered by the Greek authorities when they made their order which requested the shipowner to remove the wreck (see paragraph 4.11 for further details).

4 Claims for compensation

- 4.1 The 1992 Fund has received 373 claims amounting to EUR 94.64 million and USD 175 000. The 1992 Fund has approved 300 claims and paid some EUR 11.27 million in compensation. In order to expedite compensation payments, the 1992 Fund and its experts are continuing to visit claimants, to investigate the issues affecting the local markets, their suppliers and the economy of the region, and are continuing to assess the claims submitted and to gather further information regarding the incident from a wide range of sources.
- 4.2 Significant work has been undertaken to review local and governmental resources, to meet with relevant government departments and to review statistical evidence in order to calculate losses for the claimants, especially the fisherfolk, affected by the incident. In addition, numerous meetings were held with

<5> Article 7 of Greek Law no. 2881/2001 on wreck removal.

environmental experts in order to agree the steps to be undertaken and the criteria to be used for the post-spill monitoring studies, and to liaise with the Limitation Fund Administrator regarding the claims submitted jointly to the Limitation Fund and the 1992 Fund.

4.3 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 (EUR)

Claims submitted to the 1992 Fund						
Claim Category	Claimed		Approved		Paid by Fund	
	No.	Amount (EUR)	No.	Amount (EUR)	No.	Amount (EUR)
Clean-up	27	82.10 million	12	10.70 million	11	10.70 million**
Environmental Monitoring	5	100 303	5	95 963	4	95 963
Fisheries (including wholesalers)	165	6.27 million	150	38 572	35	36 099
Property	117	907 930	90	61 639	60	51 627
Tourism	57	5.17 million	41	384 928	22	380 627
Other	2	94 000	2	0.00	0	0.00
Total	373***	94.64 million*	300	11.28 million	132	11.27 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 a large tourist resort.

4.4 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.

4.5 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

- 4.6 Twenty-seven claims amounting to EUR 82.10 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) subsequent cleaning of the wreck 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 30 June 2018.

Oil removal from wreck

- 4.7 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.

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 crafts berthed in various marinas along the respective coasts. 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, with replacement of additional beach material operations continuing through January and February 2018.
- 4.9 The 1992 Fund's experts are continuing to assess 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. Given that at times over 400 personnel were utilised during the clean-up operations, the task of ascertaining what was a reasonable response is very complicated.
- 4.10 The claims assessment process has been further complicated by the fact that the clean-up contractors often performed clean-up operations at the same locations, and the areas of work at each location were often not clearly delineated between the various contractors, which raises the possibility of duplicate claims for the same operations being submitted. This makes the task of the 1992 Fund's experts far more time-consuming when attempting to ascertain what a reasonable response to the incident should have been. Notwithstanding these difficulties, the 1992 Fund's experts are aiming to complete the assessments of the shoreline clean-up claims by November 2019.

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 Piraeus Port 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^{<6>}, 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

<6> The introductory report for law 2881/2001 and the minutes of the permanent commission for production and trade of the Greek Parliament.

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...'.^{<7>}

- 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^{<7>} 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 the vessel 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 disputed this and stated 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 June 2018.

Environmental monitoring

- 4.19 In June 2019, the Hellenic Centre for Marine Research published its report^{<8>} which concluded that marine organisms were unaffected after December 2017 and there was no evidence of bioaccumulation or residues detected in the 3–20 metre zone following the conclusion of the clean-up operations.

^{<7>} 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.

^{<8>} The report was entitled 'The study of the short and medium term environmental consequences of the sinking of the *Agia Zoni II* tanker on the marine ecosystem of the Saronikos Gulf'.

5 Limitation proceedings

- 5.1 The 1992 Fund has cooperated closely and met on numerous occasions with the Limitation Fund Administrator in relation to issues of applicability under the Conventions, regarding those claims which were filed both with the Limitation Fund and the 1992 Fund Claims Submission Office.
- 5.2 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 EUR 94.4 million. Several claims have been filed at the Limitation Fund, which have not been filed with the 1992 Fund; conversely, some claimants have decided to only pursue their claims against the 1992 Fund rather than also filing claims against the Limitation Fund. The 1992 Fund has submitted its subrogated claims against the Limitation Fund.
- 5.3 Shortly after the date by which claims were to be filed against the Limitation Fund, a number of lawyers representing 68 new claimants applied to the Court for permission to submit claims late against the Limitation Fund. The Limitation Fund Administrator opposed the applications on the grounds that the claims verification procedure had already been completed. The Court issued its judgment in early July, dismissing the applications, and thereby allowing the Limitation Fund Administrator to conclude the claims evaluation procedure by publishing the provisional assessments^{<9>}, at which point every claimant with a claim against the Limitation Fund may accept or appeal the provisional assessment. Thereafter, Greek law permits all claimants to the Limitation Fund to file appeals against the list of accepted claims within 30 days of the issue of the list.
- 5.4 The 1992 Fund notes that, broadly speaking, there is a close correlation between the Limitation Fund Administrator's assessments and those of the 1992 Fund's experts.
- 5.5 Given the likelihood of a number of appeals by several of the claimants, the 1992 Fund's lawyers have commenced work on appeals by the 1992 Fund, against a number of the claims which have been accepted by the Limitation Fund Administrator.
- 5.6 Therefore, there is a possibility that the legal proceedings arising from claims submitted against the Limitation Fund may take considerable time to resolve, although 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 Civil proceedings

Legal proceedings commenced by the clean-up contractors

- 6.1 In July 2019, the 1992 Fund was served with legal proceedings filed at the Piraeus Court of First Instance, by two of the clean-up contractors for the balance of their unpaid claims after deducting the advance payments made so far. One clean-up contractor is claiming the sum of EUR 30.26 million, and the other clean-up contractor is claiming a range of figures from EUR 24.74 million to EUR 15.84 million plus USD 12.48 million, less the advance payment it has received. This was due to the different exchange rates used on the dates of the conclusion of the clean-up operations, or the exchange rate at the time of the initial submission of the claim to the 1992 Fund.
- 6.2 As the claims have been filed at court, interest will begin to accrue on the claims filed. The date of the hearing of the two claims filed at court is November 2019. The 1992 Fund's lawyers advise that, in their view, the claims were filed prematurely since the claims make no allowance for the sums which the claimants may receive from the distribution of the Limitation Fund, when this is concluded.

^{<9>} At a figure of EUR 45.45 million.

- 6.3 However, the 1992 Fund's lawyers have advised that the Limitation Fund may only be distributed once all appeals arising from the Limitation Fund Administrator's provisional assessment have become final, a process which may take several years. Accordingly, until that time, the Piraeus Court of First Instance will not know what amounts will be paid by the Limitation Fund and what amounts will be paid by the 1992 Fund.

7 Investigation into the cause of the incident

- 7.1 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 7.1–7.2).

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

- 7.2 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. However, to date, 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 Technical University of Athens

- 7.3 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 1992 Fund's lawyers obtained a copy of the technical report (328 pages) undertaken by the Technical University of Athens, School of Naval Architecture and Marine Engineering.
- 7.4 The technical report concludes that the *Agia Zoni II* sank after a blast loading, which created a breach through which the starboard no. 3 and 4 ballast tanks were flooded, resulting in a heel of 25.78° and trim by the stern of 1.308 metres. Seawater then entered the ship through an open porthole and flooded the engine room, leading to loss of stability and sinking.

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

- 7.5 The investigation conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor has been concluded and the 1992 Fund has received a copy of its report.
- 7.6 In summary, the ASNA report concludes that based on the statutory seaworthiness certificates issued for the ship, the *Agia Zoni II* was considered to be seaworthy prior to the incident but that, as the *Agia Zoni II* was 45 years old, thereby becoming increasingly difficult to operate in the bunkering business, the shipowners had an incentive not to renew the ship's certificates. The *Agia Zoni II* had also already reached the end of the ability to renew certificates without substantial investment.
- 7.7 The ASNA report also states that the *Agia Zoni II* had enough freeboard to remain afloat, even if some of the empty ballast tanks had flooded. In order to sink, a steady ingress of water was necessary in the starboard hopper (side ballast) tanks nos. 2, 3 and 4, or nos. 3 and 4, and that the sinking of the *Agia Zoni II* could have only been caused due to ballasting by the undue operation (opening) of the cargo tank seals or manifolds, (which had been tied shut upon departure following loading at the oil terminal) from within the *Agia Zoni II*;
- (a) In view of the fact that (a) upon loading, the *Agia Zoni II* had closed the cargo tanks which were sealed by the customs authorities, and (b) the air pipes of the tanks were automatically closed by use of a

‘sealing ball’, the escape of oil from the *Agia Zoni II* into the sea was attributed to the undue operation (opening) of the cargo tank seals or manifolds, (which had been tied shut upon departure following loading at the oil terminal) and which could have been done only from on board the *Agia Zoni II*. Furthermore, oil began leaking into the sea before the *Agia Zoni II* sank, since the two crew members who jumped into the sea before the *Agia Zoni II* sank were found fully covered in oil;

- (b) The sealing of the cargo tanks of the wreck lasted for 53 hours and the pumping out of oil from the wreck lasted for 19 days. The duration of both such operations was considered to be excessive and this delay caused considerable pollution;
- (c) The accident and the pollution caused was due to the very late and time-consuming response from the salvor, resulting in very high antipollution costs.

7.8 The third Marine Accident Investigation Council decided unanimously that the accident was attributed to the deliberate and negligent actions of the following persons:

- The shipowner;
- the general manager of the owning company;
- the Designated Person Ashore (DPA) of the owning company;
- the two crew members on board at the time of the incident; and
- representatives of the salvors and one of the clean-up contracting companies.

7.9 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 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’.

Media reports

7.10 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 reported on the conclusion of the investigation conducted by ASNA, stating that the sinking of the *Agia Zoni II* was the result of deliberate sabotage.

8 Director’s considerations

8.1 The Director notes that with the assistance of the local Claims Handling Office and the 1992 Fund’s experts, good progress has been made in assessing the 373 claims filed against the 1992 Fund, and that the assessment of the three main clean-up contractors’ claims for the shoreline clean-up operations will be concluded by November.

Environmental monitoring

8.2 The Director is also pleased to note that the report of the Hellenic Centre for Marine Research concluded that marine organisms were unaffected after December 2017, and there was no evidence of bioaccumulation or residues^{<10>} following the conclusion of the clean-up operations.

Investigation into the cause of the incident

<10>

Detected in the 3–20 metre zone.

- 8.3 The Director further notes that although the results of the investigations conducted by ASNA for the Public Prosecutor, and the Investigation by the Technical University of Athens have concluded, a number of other investigations, including the investigation into the granting of the clean-up contracts to the clean-up contractors, are still awaited.
- 8.4 The investigation by the Technical University of Athens concludes that the *Agia Zoni II* sank after a blast loading (explosion), which created a breach through which the starboard ballast tanks were flooded, and seawater entering the ship through an open porthole which flooded the engine room, leading to loss of stability and sinking. However, the report of the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor concluded that the accident was attributed to the ‘deliberate and negligent actions of a number of persons, including the shipowner, general manager, crew members aboard the vessel at the time of the incident, the DPA and the representatives of the salvor’^{<11>}.
- 8.5 Regarding the ASNA report, of specific interest are the allegations made against the shipowner, the crew, the representatives of the salvors and one of the clean-up contracting companies.
- 8.6 However, the Director also notes that the Public Prosecutor has not yet decided how much weight to apportion to each of the reports which have been presented, or to the other outstanding reports which are yet to be received. It is not clear how much longer the Public Prosecutor will take before making a decision on the cause of the incident, but the 1992 Fund’s lawyers have advised that decisions are expected shortly.

Damage caused by the act of the shipowner

- 8.7 If, following the conclusion of the investigations by the Greek authorities, it was proved that the pollution damage resulted from the shipowner’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 shipowner would not be able to limit its liability. The 1992 Fund’s lawyers are of the view that the assets of the shipowner which have been identified to date, would not be sufficient to pay the claims submitted.
- 8.8 In addition, if the shipowner was found not to be entitled to limit its liability, the 1992 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.

Damage caused by a third party

- 8.9 Since under Article 4.3 of the 1992 Fund Convention, there shall be no exoneration of the 1992 Fund with regard to preventive measures, practically, in such circumstances where the 1992 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).
- 8.10 Given that a number of investigations are still pending, it is still too early to draw any conclusions over the cause of the incident. The Director will continue to follow the investigations and will report to the 1992 Fund Executive Committee at future sessions.

Wreck removal expenses

- 8.11 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 the decision

^{<11>} Which is also one of the clean-up contractor claimants who has submitted substantial claims against the Limitation Fund and against the 1992 Fund.

to lift the wreck for environmental reasons and in order to remove any potential future pollution threats, could be considered pollution prevention^{<12>}.

- 8.12 On the other hand, the 1992 Fund's lawyers have advised that following Greek law, 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 Piraeus Port. Even if the wreck had been completely sealed, the possibility of a further release of oil due to impact by another vessel could not be ruled out.
- 8.13 The 1992 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. The 1992 Fund's experts have been instructed to assess the claims accordingly.
- 8.14 The Director will continue monitoring this matter and will report the latest developments to the 1992 Fund Executive Committee at its next session.

9 Action to be taken

1992 Fund Executive Committee

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

<12>

At the time of lifting the wreck, oil was seen to be leaking from the no.2 water ballast tank.