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COMPENSATION
FUND 1992

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ERIKA INCIDENT

Note by the Director

Summary: A new study has been carried out within the French Ministry of Economy, Finance and Industry on the likely level of claims from the tourism industry. The 1992 Fund's experts have examined the results of the study. The Director makes observations on the estimates made and proposes to increase the level of the 1992 Fund's payments from 50% to 60% of the loss or damage suffered by the respective claimants.

Action to be taken: To consider the level of the 1992 Fund's payments.

1 Level of payments

1.1 Introduction

- 1.1.1 The Director has continued his efforts to collect information on the likely level of claims.
- 1.1.2 As mentioned in paragraph 7.2.1 of document 92FUND/EXC.11/2, an extensive study was carried out within the French Ministry of Economy, Finance and Industry before the Executive Committee's 8th session in July 2000 on the extent of the damage caused by the *Erika* incident in respect of the tourism industry. In the study the estimated total amount of the admissible claims in the tourism industry fell within the range of FFfr800 – 1 500 million (£70 – 144 million).
- 1.1.3 As also mentioned in paragraph 7.3.1 of document 92FUND/EXC.11/2, a further study was carried out within the Ministry of Economy, Finance and Industry in October 2000. This study found that the total amount of the losses in the tourism sector admissible for compensation could be estimated at FFfr1 096 million (£105 million).
- 1.1.4 At its 9th session, the Executive Committee decided that, in view of the continuing uncertainty as to the total amount of the claims arising from the *Erika* incident, the level of payments should be

maintained at 50% of the amount of the loss or damage actually suffered by the respective claimants (document 92FUND/EXC.9/12, paragraph 3.6.20).

1.1.5 On 24 January 2001, the Director received a further study ("the January 2001 study") carried out within the Ministry of Economy, Finance and Industry. A summary of that study prepared by the Director is reproduced in Annex I. A summary of the comments of the 1992 Fund's experts on the study report is reproduced in Annex II.

1.2 Summary of the January 2001 study

1.2.1 In comparison with the June and October 2000 studies, further information has been analysed in the January 2001 study.

1.2.2 Occupancy surveys for hotels and campsites have been carried out covering the whole of the tourist season in the year 2000, therefore making the figures fully representative. For hotels, the figures cover the period January to December 2000. For campsites, the figures cover the whole of the tourist season, ie May to September 2000. The VAT figures used in the January 2001 study are more significant than those used in the October 2000 study, as they cover the period January to September, with the exception of very small companies which make declarations in April and for which assumptions have been made. Detailed information has been gathered concerning the domestic refuse collected in communes on the affected coast for 1999 and 2000, allowing an appreciation of any variances in the total number of people staying in the affected area between June and September 2000 across all types of accommodation, ie both non-commercial accommodation (second homes or visiting friends and relatives) and commercial accommodation (hotels, camping and self-catering apartments). Monitoring of general trends nationally, such as national statistics collected by the Fédération des Entreprises du Commerce et de la Distribution, sales at Post Offices, sales of railway tickets and the sale of flour by wholesalers to bakers' shops have been used as further indicators of trends in tourism and the economy in general.

1.2.3 Two independent methods have led to very similar results:

- Accommodation statistics approach: FFr1 158.5 million (£110 million)
- VAT declaration approach: FFR1 083.0 million (£104 million)

1.2.4 It is stated in the study that, in view of the fact that the two methods lead to very similar results, it is possible to assess the maximum amount of admissible claims for compensation in the tourism sector at between FFr1 100 million and FFr1 200 million.

1.2.5 The January 2001 report concludes that on the basis of the most recent data the level of compensation payments can be increased while still maintaining a safety margin. It is suggested that, on the assumption that the claims from the sectors other than tourism will amount to FFr300 million (£29 million), and after adding an extra safety margin of FFr100 million (£10 million), the total amount of the admissible claims would reach FFr1 600 million (£150 million). It is maintained in the report of the study that this would allow the 1992 Fund to increase the level of payments to 75%.

1.3 Opinion of the 1992 Fund's experts on the January 2001 study

1.3.1 As the results of the January 2001 study were received only on 24 January 2001, the 1992 Fund's experts have had only very limited time to examine them.

1.3.2 The 1992 Fund's experts were consulted on the methodology during the Ministry's investigation and are very impressed by the depth of the analysis undertaken which they consider has set new standards in the monitoring of tourism industry performance.

1.3.3 The Fund's experts have pointed out that the officials within the Ministry carrying out the study have had access to detailed information outside the public domain, notably up-to-date statistics on

tourism demand by month and the tax records held by local tax offices along the Atlantic coast, which has enabled exhaustive research to be undertaken both at macro economic (a 'demand approach')^{<1>} and micro economic ('supply approach')^{<2>} levels. In the experts' view, the data provided not only assists in assessing the impact of the *Erika* incident on tourism but also provides valuable comparative information to assist assessments of individual tourism claims for economic loss.

- 1.3.4 The 1992 Fund's experts broadly agree with the overall estimate in the January 2001 study of a total of admissible claims in the tourism sector falling in a range of between FFr1 100 and FFr1 200 million. The experts have pointed out that this result is consistent with the October 2000 estimate of FFr1 100 million and the June 2000 estimate of between FFr800 and FFr1 500 million.
- 1.3.5 The experts have drawn attention to the fact that in making this latest assessment it has been possible to use actual results for the main tourist season, April to October 2000, and actual tax declarations for the period January-September 2000, thereby minimising the number of assumptions that had to be made. The experts have stated that the January 2001 study goes a long way towards answering some specific queries raised by them in respect of the October 2000 study. They have mentioned that the uncertainties raised by them in October 2000 regarding the impact of the oil spill on non-commercial accommodation, which make a significant contribution to the tourism economy of the French Atlantic coast, have largely been dispelled by exhaustive research into domestic refuse collection. The experts have considered that by comparing the data from 1999 and 2000 on refuse collection across a representative sample of local authorities along the affected coast, an accurate measure of the scale of the physical presence of tourists has been produced which has allowed reasonable estimates for all accommodation sectors in the affected area to be made.
- 1.3.6 The 1992 Fund's experts have nevertheless mentioned that in assessing the likely maximum level of tourism claims at FFr1 200 million, the January 2001 study has not taken into consideration some other factors, namely the sums spent by tourism institutions or individual businesses on promotional activities in an attempt to mitigate the impact of the *Erika* incident, claims from businesses outside France, claims which may be presented for losses incurred during 2001 due to the risk of re-oiling of the coastline and the position which the French courts may take as regards the criteria for the admissibility of claims.
- 1.3.7 In the 1992 Fund's experts' view the factors referred to in paragraph 1.3.6 may have led to an underestimate of the overall level of claims. They have recognised, however, that this underestimation may well be offset by a proportion of potential claimants deciding not to claim or not being able to prove their losses.

1.4 Other assessment of the total amount of the damage arising from the *Erika* incident

- 1.4.1 Recently the French media reported a study carried out by a French consulting firm specialising in accounting (Mazars et Guérard) of the damage resulting from the *Erika* incident. The study had been commissioned by l'Association Ouest Littoral Solidaire (a group of three administrative regions: Bretagne, Pays de La Loire and Poitou-Charentes). According to the study the total amount of the damage can be estimated to be in the range of FFr5 500 – 6 300 million (£527 – 603 million).
- 1.4.2 The Director has not been able to get access to the study but it appears from press reports that the estimates are as follows:

<1> A macro economic analysis based on an analysis of tourism consumption statistics by market segment and the results of relevant research on average tourist spending.

<2> A micro economic approach based on an estimation of the turnover of tourism businesses obtained by a detailed analysis of declarations for tax purposes from businesses of all types in the tourism sector.

	FFr (million)
1. Pumping of the oil from the wreck, destruction of collected waste, clean up (Total Fina)	1 000
2. French State, Plan Polmar, communes	1 090
3. Tourism industry (out of which FFr600 million is for losses in 2001 and 2002)	2 600 - 3 200
4. Maritime sector	340 - 480
5. Reinstatement of image	150 - 200
6. Environmental damage (including treatment of contaminated sea birds (FFr50 million), reinstatement of polluted areas (FFr40 million) and between FFr120 million and FFr140 million for various studies	250 - 350

5 430 - 6 320

1.4.3 The Director has no information of the methods used for this assessment. It appears, however, that as regards the losses in the tourism sector (item 3) the assessment is based on a reduction in turnover and not on the loss of profit, the latter being the basis of the assessment of compensation. As regards the maritime sector (item 4), the Director believes that the amount indicated is exaggerated (cf paragraph 1.5.3 below). It also appears that the amounts referred to in item 6 would fall outside the definition of "pollution damage" laid down in the 1992 Conventions. It should be noted that items 1 and 2 in the table can be disregarded for the purpose of the Executive Committee's consideration of the 1992 Fund's level of payments, since these items relate to costs incurred by Total Fina and the French State (cf paragraph 1.5.2 below).

1.5 The Director's consideration as regards the level of the 1992 Fund's payments

1.5.1 The Executive Committee will again have to consider how to strike a balance between the importance of the 1992 Fund's paying compensation as promptly as possible to victims of oil pollution damage and the need to avoid an over-payment situation. In the Committee's consideration of how to strike this balance the following elements may be of assistance.

1.5.2 It should be recalled that the claims by Total Fina and the French Government can be disregarded for the purpose of the Executive Committee's consideration of the level of payments, since these claims will be pursued only if and to the extent that all other claims have been paid in full.

1.5.3 The figures for the clean-up operation claims and the claims in the fishery and mariculture sectors have been estimated by the 1992 Fund at FFr150 - 200 million (£14 - 19 million) and FFr125 million (£12 million) respectively, ie a total of FFr275 - 325 million (£26 - 31 million). If the estimates in the January 2001 study on the losses in the tourism sector carried out within the Ministry of Economy, Finance and Industry (which include an extra safety margin of FFr100 million) are accepted, the total admissible claims would be in the region of FFr1 600 million (£131 million). Should this figure be correct, it might be possible to fix the level of the 1992 Fund's payment at 75% of the proven loss or damage suffered by the individual claimants.

1.5.4 It should be noted, however, that there remain some significant uncertainties in these estimates, as indicated by the 1992 Fund's experts. No allowance has been made for publicity campaigns. The January 2001 study is based on the criteria for admissibility applied by the 1992 Fund. The

Director has been advised, however, that the French courts might take a more extensive approach in their interpretation of the notion of "pollution damage", and it is not possible to predict the consequences of such an approach. There is also a risk that re-oiling of the coastline will take place as a result of storms and high tides during the winter months, which could cause further loss in particular in the fishery and mariculture sectors. However, in the Director's view this risk has decreased considerably, and it is in any event unlikely that there would be a massive re-oiling.

- 1.5.5 As mentioned above the claims in the sectors other than tourism have been estimated at some FFr300 million. The Director considers that it is necessary to take into account also costs for marketing campaigns of some FFr100 million. Furthermore, the Director submits that it would be prudent to add a safety margin of FFr200 million instead of the FFr100 million suggested in the report of the January 2001 study. The estimated total admissible claims would then be in the region of FFr1 800 million. The Director believes, therefore, that the level of the 1992 Fund's payments could be increased to 60% of the proven loss or damage suffered by the individual claimants, and proposes that the Executive Committee takes a decision to this effect.

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 decide on the level of the 1992 Fund's payments.

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ANNEX I

Summary of the report of the January 2001 study carried out within the Ministry of Economy, Finance and Industry

Summary prepared by the Director

- 1 As in the previous studies, two alternative approaches have been used, the demand method and the supply method.
- 2 Since the October 2000 session of the Executive Committee it has been possible to collect and analyse further information resulting in new estimates.
- 3 The new information relates to three areas:
 - Occupancy surveys for hotels and campsites have been undertaken covering the whole of the year 2000, therefore making the figures fully representative. For hotels, the figures cover the period January to December 2000. For campsites, the figures cover the whole of the tourist season, ie May to September 2000.
 - In the October 2000 study information on VAT payments was only available up to June or July 2000. The VAT figures used in the January 2001 study are more significant, as they cover the period January to September 2000, with the exception of very small companies for which assumptions have been made, due to the fact that they make their declarations in April.
 - Detailed information has been gathered concerning the quantities of domestic refuse collected in communes on the affected coast for 1999 and 2000, giving an indication of any variances in the total number of people staying in the affected area between June and September 2000 in all types of accommodation. This approach allows an indirect evaluation of those tourists staying in non-commercial accommodation (second homes or visiting friends and relatives).
- 4 For the self-catering apartment sector, more detailed enquiries were made through a national letting agency group, 'Clévacances', which confirmed the representivity of the group's survey. The results of that survey are similar to those obtained by an analysis of tourist tax ('taxe de séjour') collection from coastal communes in the Department of Loire Atlantique.
- 5 Monitoring of general trends nationally, such as national statistics collected by the Fédération des Entreprises du Commerce et de la Distribution, sales at Post Offices, sales of railway tickets and the sale of flour by wholesalers to bakers' shops have given further indicators of trends in tourism and the economy in general.
- 6 Two independent methods have led to very similar results:
 - Accommodation statistics approach: FFr1 158.5 million
 - VAT declaration approach: FFr1 083.0 million
- 7 The fact that these two methods give results which are so similar (less than 10% difference) shows three things:
 - The excellent quality of the methodology used for the studies, in particular the data collected and its treatment
 - The validity of data used since the autumn
 - The reliability of the result in assessing the maximum exposure of the 1992 Fund in the tourism sector.

- 8** It is stated in the study that, in view of the fact that the two results are so close, it is possible to assess the maximum risk to the 1992 Fund for claims arising in the tourism sector at between FFr1 100 million and FFr1 200 million.
- 9** It is emphasised that this is not a forecast of the likely level of claims, nor an estimate of what will be admissible for compensation. No calculations have been made of a minimum risk, which is not of interest in fixing the level of payments.
- 10** These results should not be misinterpreted. They do not signify that the admissible losses to the 1992 Fund are likely to reach these figures, but are intended to show that there is no reason to believe that the losses would be greater. The results presented presuppose that all individuals who have suffered losses will present claims and will be able to justify their losses. This is unlikely to be the case as regards many individuals letting holiday homes, who represent a significant number in the calculations. The results also ignore the fact that losses in turnover of businesses or decreases in the number of visitors to certain locations may be due to factors other than the *Erika* oil pollution.
- 11** Some thousand claims from the tourism sector have been presented so far. According to the Fund's experts, it is difficult to use the data on claims to make forward predictions. It is clear that the majority of the claims have not yet been presented and it is not possible to draw any conclusions as to the total number of claims. This will probably still be the case in several months' time.
- 12** By assuming that the total of non-tourism claims will be in the order of FFr300 million, and by reserving FFr100 million as a precaution, and using the higher figure of FFr1 200 million estimated in the January 2001 study, the total level of claims would be FFr1 600 million. This total would permit a payment level of 75% of the approved claim.
- 13** By contrast the current payment level of 50% leaves in respect of the evaluation of tourism and non-tourism related claims an excessive margin of caution of FFr900 million (FFr2 400 – 1 500 million).

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ANNEX II

Summary of the comments by the 1992 Fund's experts, L & R Consultants, on the report of the January 2001 study carried out within the Ministry of Economy, Finance and Industry

- 1 L & R Consultants (L & R) have had little time to examine the report of the January 2001 study carried out within the Ministry of Economy, Finance and Industry.
- 2 An exhaustive research programme has been carried out within the Ministry throughout 2000 into the impact of the *Erika* incident on the tourism economy of the French Atlantic coast and the likely level of admissible tourism economic loss claims.
- 3 In undertaking this research the Ministry has had privileged access to detailed information outside the public domain, notably up to date statistics on tourism demand by month and the tax records held by local tax offices along the Atlantic coast. This has enabled exhaustive research to be undertaken both at macro economic (a 'demand approach') and micro economic levels ('supply approach'). The data provided not only assists in assessing the impact of the *Erika* incident on tourism but also provides valuable comparative information to assist assessment of individual tourism claims for economic loss.
- 4 L & R have been consulted on the methodology during the Ministry's investigation and is very impressed by the depth of analysis undertaken which has set new standards in the monitoring of tourism industry performance.
- 5 L & R broadly agrees with the Ministry's overall estimate of total tourism economic loss claims falling in the range of between FFr1 100 and 1200 million. This result is consistent with the October 2000 estimate of FFr1 100 million and the July 2000 estimate of a range between FFr800 and 1 500 million.
- 6 In making this latest assessment the Ministry has been able to use actual results for the main tourist season, April to October 2000, and actual tax declarations between January and September 2000, thereby minimising the number of assumptions that have to be made.
- 7 The January 2001 report goes a long way towards answering the following specific queries raised by the L & R team in respect of the October 2000 study.

- 1 Uncertainty regarding the scale of possible losses incurred in the self-catering accommodation sector

After L & R's raising doubts on the broad assumptions made across this sector in the October 2000 study, the Ministry has conducted an analysis in Loire Atlantique of the collection of tourism tax ('taxe de séjour') in coastal communes. The results of this analysis confirm that application of occupancy rates as shown by a national survey of self-catering accommodation is a reasonable assumption.

- 2 Uncertainty regarding the scale of possible economic losses through reductions in tourists in the non-commercial accommodation sector (second homes and visiting friends and relatives)

The uncertainties raised by L & R regarding the impact of the oil spill on non-commercial accommodation which together make a significant contribution to the tourism economy of the French Atlantic coast have largely been dispelled by exhaustive research into refuse collection. By collecting and comparing the Ministry's data from 1999 and 2000 on refuse collection across a representative sample of local authorities along the French coast, an accurate measure of the scale of the physical presence of tourists has been produced which allows reasonable estimates for all

accommodation sectors in the affected area to be made (assuming relative stability of total residential population).

- 8** In terms of assessing the likely maximum level of tourism claims at FFr1 200 million the January 2001 study does not however take into consideration a number of other factors.
- The study does not take into consideration the exceptional sums spent by tourism institutions or individual businesses on promotional activity or other efforts to mitigate the impact of the *Erika* incident. Claims from the tourist boards in the département de Vendée and the Brittany regional tourist boards have been approved. L & R has previously estimated that the costs of mitigation campaigns by tourism institutions could amount to around FFr57 million. It is not possible to estimate at this stage the costs incurred by individual businesses.
 - The January 2001 study does not take into consideration claims from businesses outside France, for example specialist overseas tour operators who rely on sales of holidays to the affected area and who might be able to demonstrate that their claims fulfil the criteria for admissibility.
 - The study has not taken into account that claims may be presented for losses incurred during 2001 due to the risk of re-oiling of the coastline as a result of storms or high tides.
 - The study has not taken into account the position which the French courts may take as regards the criteria for the admissibility of claims.
- 9** The factors referred to in paragraph 8 may have led to an under-estimate of the overall level of claims. However, this under-estimation may well be offset by a proportion of potential claimants deciding not to claim because many small tourism or tourism-related businesses may consider the process involved in submitting a claim too complicated, or may not be able to provide sufficient evidence to prove their loss. Likewise many potential claimants may fear that submitting a claim may result in loss of commercial confidentiality.
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