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OIL POLLUTION  
COMPENSATION  
FUND 1992

EXECUTIVE COMMITTEE  
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Agenda item 3

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## INCIDENTS INVOLVING THE 1992 FUND

### ERIKA - CONVERSION INTO FRENCH FRANCS OF THE MAXIMUM AMOUNT PAYABLE UNDER THE 1992 FUND CONVENTION

#### Note by the Director

**Summary:**

As has been reported to the Executive Committee at previous sessions, a number of allegations and threats have been made against the staff at the Claims Handling Office in Lorient, against the experts engaged by the 1992 Fund and against the Director. Recently, further allegations have been made accusing the Director of having committed fraud when converting the maximum amount of compensation payable under the 1992 Fund Convention, 135 million SDR, into French francs.

**Action to be taken:**

- (i) Information to be noted
- (ii) Make such statements as the Executive Committee considers appropriate.

#### 1 Introduction

It will be recalled that accusations and threats have been made against staff at the Claims Handling Office in Lorient, against experts engaged by Steamship Mutual and the 1992 Fund and against the Director. These threats and allegations have continued more or less continually. This document summarises previous events and sets out recent developments, in particular accusations relating to the Executive Committee's and Director's decision on the conversion of 135 million SDR into French francs.

**2 Difficulties previously faced by the 1992 Fund in France**

- 2.1 As reported at the Executive Committee's 8th session, held in July 2000, a person who presented himself as general secretary of a newly-created entity, Confédération Maritime, forced his way into the Claims Handling Office in Lorient on 13 March 2000 together with another person. A number of journalists from the press, radio and television also entered. The individual in question stated his demands and insulted the staff of the office. A senior police officer arrived and tried to persuade the intruders to leave the office but without success. A considerable number of policemen were called to the office and they managed to remove the intruder from the office without any violence.
- 2.2 As also reported at the Committee's 8th session, held on 9 May 2000 four persons led by the same individual who had led the intrusion in the Claims Handling Office in March forced themselves into the office in Brest of the experts engaged by the 1992 Fund and Steamship Mutual to monitor the clean-up operations. The four persons climbed the building and entered the office through a window on the first floor. The staff were threatened when they tried to stop the intruders. The police were called. A number of journalists from television and press also entered the office. The intruders then left the office with the police. The intruders presented documents to the media repeating the allegations and containing threats against the surveyors and the staff at the Claims Handling Office, as well as against their families.
- 2.3 At its 8th session, while understanding the feelings of the people in the area affected by the *Erika* incident, the Executive Committee endorsed the position taken by the Director that attacks, threats or intimidation against the staff at the Claims Handling Office or other persons engaged by the Fund, as well as against their families, were unacceptable and that it would not be possible for the 1992 Fund to maintain the operations in France if such behaviour continued (document 92FUND/EXC.8/8, paragraph 3.7).
- 2.4 The experts referred to in paragraph 2.2 presented a complaint against the intruders to the public prosecutor. The prosecutor decided however not to pursue any action against the intruders without giving any reasons for his decision.
- 2.5 At its 11th session, held in January 2001, the Executive Committee was informed that a demonstration had taken place in front of the Claims Handling Office in Lorient on 12 December 2000, ie on the anniversary of the *Erika* incident, in which some 12 persons participated led by the individual referred to in paragraph 2.1 above. The demonstration was generally peaceful. However, this individual and two other persons splashed the walls and windows of the Office with black paint and climbed on to the roof of the building. They were arrested by the police. The demonstration was given considerable media coverage. The Claims Handling Office made a formal complaint to the public prosecutor against whoever was responsible for the acts. It appears that no action has been taken yet by the prosecutor as a result of the complaint.
- 2.6 It was reported at the Committee's 11th session that the same individual had made a formal complaint to the public prosecutor against persons linked with the 1992 Fund's operations in France and in the United Kingdom. According to French press reports, it was maintained in the allegations that funds which should be used for payments to victims had been embezzled and that persons in Lorient and elsewhere had a personal interest in delaying payments, since they would profit from interest on the funds. The allegations were given wide media coverage. The Director gave information to the media in France on the operations of the compensation system showing that the allegations were groundless, but that information was not given the same coverage. Neither the 1992 Fund nor any person linked with the Fund's operations has been notified of these complaints.
- 2.7 It was also reported at the Committee's 11th session that the individual concerned had filed several complaints with the public prosecutor in Lorient against the persons in charge of the

Claims Handling Office. Neither the 1992 Fund nor the Head of the Claims Handling Office is aware of what actions the public prosecutor has taken as a result of these complaints. The Head of the Claims Handling Office received from that individual threats to the effect that further accusations would be made in the media unless compensation was paid for the claim presented by that individual which had been rejected. The individual also in general made a number of allegations against the Head of the Claims Handling Office, other staff of the Office and the Director and sent abusive and insulting letters to them.

- 2.8 When the issues dealt with in paragraphs 2.5 – 2.7 were reported to the Executive Committee at its 11th session, a number of delegations expressed their serious concern as regards the various actions described above.
- 2.9 The French delegation stated that the French authorities had taken steps to prevent events of the kind referred to above. That delegation added that in a democratic society it was necessary to strike a balance between measures to this effect and the freedom of expression and the right to peaceful demonstration.
- 2.10 At its 11th session, the Executive Committee reiterated its position that attacks, threats or intimidation against the staff at the Claims Handling Office or other persons engaged by the Fund, as well as against their families, were unacceptable.
- 2.11 At the Executive Committee's 13th session, held in June 2001, the Director made the following statement:

The Director informed the Executive Committee at its 11th session held in January 2001 (cf document 92FUND/EXC.11/2/Add.1) that a person identifying himself as president of an organisation called 'Confédération Maritime' had during the year 2000 organised various demonstrations against the Claims Handling Office in Lorient as well as against the offices in Brest of the maritime experts engaged by the 1992 Fund and the Steamship Mutual to supervise the clean-up operations. The Director had informed the Committee at that time that this person had, or claimed to have, lodged several complaints with the Public Prosecutor against the persons in charge of the Claims Handling Office.

Since that time this person has continued to make numerous defamatory declarations to the press not only with respect to the persons in charge of the office in Lorient but also with respect to the IOPC Funds. Recently, the 'Confédération Maritime' had announced to the press that it was preparing to lodge a complaint with the Public Prosecutor against the Director who was 'personally responsible for the setting up of the Claims Handling Office, its management and the recruitment of its staff', demanding 'the immediate disbanding' of the office and its replacement by a 'team made up of former fishing or merchant navy captains'.

The Director expressed the hope that the French judicial authorities would urgently take all necessary steps for the complaints to be given the treatment they deserved.

- 2.12 The French delegation stated at the Committee's 13th session that it had taken note of the information given by the Director concerning the actions by the 'Confédération Maritime'. That delegation expressed its confidence in the 1992 Fund and its Director. The delegation stated that, according to the information available so far, all the procedures concerning the 'Confédération Maritime' had been attributed to the same jurisdiction and that it would have to be left to the judicial authorities to take the appropriate decisions.

### **3 Recent accusations**

- 3.1 In September 2001 an association for the protection of the sea, 'Keep it Blue', joined by la Confédération Maritime made a complaint to the public prosecutor maintaining that the Director had committed fraud in connection with the decision on the conversion of the maximum amount payable under the 1992 Fund Convention expressed in SDR into French francs. The Director was accused of having violated the 1992 Fund Convention by converting the SDR into francs on a date different from that laid down in the Convention. It was stated that the Director had personally made the calculation on the basis of a rate chosen by him, ie 15 February 2000, whereas the conversion should have been made using the rate on 4 April 2000, ie on the date when the Assembly considered the matter, thereby depriving the victims of FFfr35 227 130. The accusers requested that the Director should be removed. They also requested that the members of the French delegation to the 1992 Fund be dismissed since they had not defended the legitimate interests of the victims, the French State and the taxpayers.
- 3.2 These accusations were set out in a press release dated 3 September 2001 and repeated at a press conference held in Nantes on 4 September 2001.

### **4 Decisions on the conversion**

- 4.1 The conversion of the maximum amount available for compensation into national currency is governed by Article 4.4(e) of the 1992 Fund Convention which reads:

"The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly as to the first date of payment of compensation".

- 4.2 A decision of principle on the method to be used for conversion was taken by the 1992 Fund Assembly at its 2nd session, held in October 1997, in respect of the *Nakhodka* incident (document 92FUND/A.2/29, paragraph 17.2.8):

"The Assembly decided that the conversion of 135 million SDR into national currency should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible. It was noted that as regards the *Nakhodka* incident, this date was 17 April 1997 and that the rate of exchange at that date (1 SDR = ¥171.589) would result in 135 million SDR equalling ¥23 164 515 000 (£114 million). It was further decided that if the Record of Decisions was not adopted during the session, the date for conversion should be that of the last day of session."

- 4.3 Pursuant to Article 18.9 of the 1992 Fund Convention, the Assembly may establish any temporary or permanent subsidiary body it considers necessary, define its terms of reference and give it the authority needed to perform the functions entrusted to it.
- 4.4 In accordance with Article 18.9, the Assembly decided, at its 2nd session, to create an Executive Committee with the following mandate:
- 1 to take decisions in place of the Assembly on matters referred to in Article 18.7 of the 1992 Fund Convention, in particular on claims for compensation referred to it by the Director;

- 2 to consider new issues of principle and general policy questions relating to claims for compensation as they arise (and not in the abstract) and procedures for handling incidents involving the 1992 Fund;
  - 3 to extend, to the extent it considers appropriate, the Director's authority to make final settlement of claims arising out of a given incident beyond that vested in him in accordance with the Internal Regulations;
  - 4 to give the Director such instructions in respect of the handling of claims for compensation as may be required; and
  - 5 to make such recommendations to the Assembly, for example on questions of principle of great importance, as the Executive Committee may deem appropriate.
- 4.5 The Assembly has thus delegated to the Executive Committee the authority to take decisions relating to claims for compensation. With regard to the *Erika* incident, the Executive Committee, at its 6th session held in February 2000, decided upon that date for the conversion of SDR into French francs as follows (document 92FUND/EXC.6/5, paragraphs 3.27 –3.30):

The Executive Committee noted that, pursuant to Article 4.4(e) of the 1992 Fund Convention, the maximum amount payable under the 1992 Fund Conventions, 135 million Special Drawing Rights (SDR), should be converted into national currency on the basis of the value of that currency by reference to the SDR on the date of the decision of the 1992 Fund Assembly as to the first date of payment of compensation.

It was noted that, once the Executive Committee had been established by the Assembly, decisions on payments of compensation would normally be taken by the Committee rather than by the Assembly. The Committee took the view therefore that the reference in Article 4.4(e) to the Assembly should be considered as referring to the Executive Committee.

The Executive Committee decided that, in accordance with the Assembly's decision in the *Nakhodka* case (document 92FUND/A.2/29, paragraph 17.2.8), the conversion of 135 million SDR into French Francs should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 6th session, ie 15 February 2000.

Since the applicable currency rates would only be available on 17 February 2000, the Executive Committee instructed the Director to make the necessary calculations and report the result to the Committee's 7th session.

- 4.6 It should be noted that at its 6th session, the Executive Committee authorised the Director to make final settlements on behalf of the 1992 Fund of all claims arising out of the *Erika* incident, to the extent that the claim did not give rise to questions of principle which had not been previously decided by the Committee (document 92FUND/EXC.6/5, paragraph 3.9). In a document submitted to that session, the Director drew the Committee's attention to the fact that, should the Committee authorise him to make payments, the Committee would not be able to take any decision as to the date of the first payment (document 92FUND/EXC.6/2, paragraph 8.2). At that session, the Committee limited the Director's authority to provisional payments under Internal Regulation 7.9 (document 92FUND/EXC.6/5, paragraph 3.18).
- 4.7 The Director reported the results of this calculation to the Executive Committee at its 7th session, held from 3 to 6 April 2000, which had given 135 million SDR = FFfr1 211 966 811. The

Committee endorsed this calculation as noted in the Record of Decisions (document 92FUND/EXC.7/5, paragraph 3.2.23):

The Executive Committee recalled that it had decided at its 6th session that the conversion of 135 million SDR into French Francs should be made on the basis of the value of that currency *vis-à-vis* the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 6th session, ie 15 February 2000 (document 92FUNDEXC.6/5, paragraph 3.2.9). The Committee endorsed the Director's calculation of the conversion on the basis of the rates applicable on that day, giving 135 million SDR = FFr1 211 966 881.

- 4.8 At its 4th extraordinary session, held from 4 to 6 April 2000, the Assembly took note of the information given by the Director in document 92FUND/A/ES.4/2 on the *Erika* incident and decided to levy contributions to the *Erika* Major Claims Fund (document 92FUND/A/ES.4/7, paragraphs 3.1-3.5).
- 4.9 At its 5th session, held from 23 to 27 October 2000, the Assembly approved the reports of the Executive Committee on its 5th to 9th sessions (document 92FUND/A.5/28, paragraph 20.2).
- 4.10 As is clear from the foregoing, the decision which fixed the date which should be used for conversion of SDR into French francs was taken by the Executive Committee and not by the Director. Contrary to what is stated in the complaint, the Director did not violate any Convention but carried out the conversion in accordance with the Executive Committee's instructions using 15 February 2000 as the date of conversion, a purely mathematical calculation. The Director's actions were endorsed by the Executive Committee. The Executive Committee, acting on the authority of the Assembly, had the power to take this decision. In its decision in the *Nakhodka* case referred to in paragraph 4.2 above, the Assembly explicitly recognised that decisions on the date for conversion would be taken by the Executive Committee. The Assembly approved the reports on the Executive Committee's sessions where this issue was considered.
- 4.11 On 4 October 2001, the 1992 Fund issued a press release in France in response to the accusations referred to in paragraph 3.1. The press release in its English translation is at the Annex.
- 4.12 The Confédération Maritime and 'Keep-it-Blue' responded to the 1992 Fund's press release maintaining in particular that the decision on the conversion was taken by the Director, that the Committee did not have the authority to take any decision on the conversion in question, since the Rules of Procedure of the Assembly did not give the Committee such authority, that the work of the Committee should be governed by the Rules of Procedure of the Assembly unless otherwise provided in the Convention, that the Convention expressly provided that the conversion should be made on the basis of the rate of exchange on the date of the Assembly's decision, that the Committee's mandate did not cover such decisions and that the Committee did not have the power to decide that the reference in Article 4.4(e) to the Assembly should be considered as referring to the Committee. It was also argued that the decision was in reality an amendment to the 1992 Fund Convention which could only be brought about by a Diplomatic Conference convened by IMO. It was maintained that since the decision on the conversion was taken by the Assembly in October 2000 and not on 4 April 2000, the resulting loss for the French claimants was FFr132 310 766 and not FFr35 227 130.
- 4.13 It should be noted that it is the Director's understanding that the Executive Committee's decision was taken in order to fix at an early date the amount available for compensation expressed in French francs so as to remove any uncertainty in this regard.
- 4.14 It is obvious that any decision as to the conversion between currencies could with hindsight be found to be advantageous or detrimental to claimants. During the period since the *Erika* incident occurred, the rate of the SDR *vis-à-vis* the French franc on certain dates would have been less favourable to victims, whereas the rate on other dates more favourable.

**5 Claim for compensation by the individual in question**

- 5.1 It should be noted that on 3 February 2000 the individual in question had submitted a claim for FFr134 925 (£13 000) in respect of losses allegedly suffered as a result of the *Erika* incident having prevented him running boat cruises for tourists around the Brittany coast. The claimant maintained that his business had suffered a drop in reservations following the negative publicity on the incident. Tourism and maritime experts engaged by the Steamship Mutual and the 1992 Fund visited the claimant. The experts found that the claimant's boat was unsuitable for the purpose proposed. They noted that the licence to carry out the activity, which had been issued in January 1997, had lapsed after 18 months of inactivity and that the claimant had not applied to have the licence revalidated. They also noted that the claimant was unable to provide data on which to base an assessment of his losses because the boat had not been used since 1996. In the light of these findings, the 1992 Fund and Steamship Mutual decided in August 2000 to reject the claim.
- 5.2 In September 2001 this individual submitted an additional claim for another FFr134 925 claimed to be his loss for 2001, and for FFr500 000 as a result of his personal bankruptcy. No documentation has been submitted in support of this claim.
- 5.3 The individual in question announced in September 2001 that he would request that the Tribunal de Grande Instance in Sables d'Olonne should appoint a court expert to assess his claims. The Fund has however not yet been notified of this request.
- 5.4 In September 2001 this individual presented a claim on behalf of la Confédération Maritime for FFr500 000 (£47 600) to cover its expenses to defend the interests of the victims of the *Erika* incident. No documentation has been submitted in support of this claim.

**6 Action taken before the Administrative Court in Nantes**

A group of claimants acting under the name of Syndicat de la Confédération Maritime filed an *ex parte* application before the Tribunal Administrative in Nantes to seek the appointment of a court surveyor whose mission would be to ascertain whether the criteria laid down by the 1992 Fund for compensation to victims of pollutions have been complied with in the case of the *Erika* incident, and to describe all "abnormalities" in the present compensation scheme. This request was filed on 3 September but was rejected by the Court on 4 September with exceptional dispatch compared with the time normally taken by the administrative courts to respond. The reason given for rejecting the application was that the facts relied on did not appear to give rise to any action falling within the jurisdiction of the administrative courts.

**7 Issues submitted to the Executive Committee for consideration**

- 7.1 In view of the serious allegations set out above, the Executive Committee may wish to consider the issues involved and the actions taken by the Director.
- 7.2 The Executive Committee may also wish to consider bringing the matter to the attention of the Assembly.

**8 Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document;
- (b) to consider the procedure applied for the conversion of the maximum amount available for compensation, 135 million SDR, into French francs and the Director's actions in this regard;

- (c) to make such statements as it may deem appropriate;
- (d) to consider whether to draw the Assembly's attention to this issue; and
- (e) to give the Director such instructions in respect of the issues set out in this document as it may deem appropriate.

\* \* \*



## ANNEX

### Press release

4 September 2001

#### **The IOPC Fund provides information concerning the date of conversion into francs of the sum available for compensation in respect of the *Erika* incident**

Yesterday (Monday 3 September 2001), *Keep it Blue* and *La Confédération Maritime* accused the Director of the IOPC Fund of *violating the 1992 Fund Convention by converting the Special Drawing Rights (SDR) [which the Fund has to pay to victims] into French francs on a different date from that provided for in the Convention.* He also, they alleged, *carried out himself the calculation of the conversion on a date determined by himself.*

These accusations are without foundation.

The decisions were in fact taken not by the Director but by the Executive Committee, one of the organs of the IOPC Fund, composed of representatives of the Governments of the Member States. The Director therefore has not and could not have violated the 1992 Convention. Furthermore, the decisions taken are perfectly in conformity with the Convention and the rules and procedures in force within the organisation.

The IOPC Fund is an intergovernmental organisation established by States. The 1992 Fund Convention which created the Fund entrusted it with the task of compensating victims who had suffered quantifiable damage caused by oil pollution from tankers. The IOPC Fund, which is based in London, is governed by an Assembly consisting of representatives of the Governments of all Member States, including France. The Assembly meets in ordinary session once a year. It elects an Executive Committee consisting of 15 Member States.

The maximum amount available for compensation is fixed by the 1992 Convention at 135 million Special Drawing Rights per incident.

The text of the 1992 Fund Convention provides, in Article 4, paragraph 4(e), concerning the date for conversion of 135 million SDR available for compensation as follows:

*"The amounts mentioned in this Article shall be converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right on the date of the decision of the Assembly of the Fund as to the first date of payment of compensation."*

A decision in principle was taken by the Assembly at its 2nd session, held from 22 to 24 October 1997, concerning an incident which occurred in Japan following the sinking of the *Nakhodka* (document 92FUND/A.2/29, paragraph 17.2.8):

*"The Assembly decided that the conversion of 135 million SDR into national currency should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible."*

The Executive Committee has the authority, delegated to it by the Assembly, to take decisions concerning claims for compensation. With regard to the *Erika* incident, the Executive Committee, meeting on 15 February 2000, fixed that date for the conversion of the SDR into French francs. This was noted in paragraphs 3.28 and 3.29 of the Record of Decisions of the 6th session of the Executive Committee (document 92FUND/EXC.6/5):

- 3.28 *It was noted that, once the Executive Committee had been established by the Assembly, decisions on payments of compensation would normally be taken by the Committee rather than by the Assembly. The Committee took the view therefore that the reference in Article 4.4(e) to the Assembly should be considered as referring to the Executive Committee.*
- 3.29 *The Executive Committee decided that, in accordance with the Assembly's decision in the Nakhodka case (document 92FUND/A.2/29, paragraph 17.2.8), the conversion of 135 million SDR into French Francs should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 6th session, ie 15 February 2000.*

With regard to the calculation of the conversion, the Executive Committee decided at its 6th session, held on 15 February 2000, to instruct the Director to carry out that operation. This was noted in the Record of Decisions taken by the Executive Committee at that session (document 92FUND/EXC.6/5):

- 3.30 *Since the applicable currency rates would only be available on 17 February 2000, the Executive Committee instructed the Director to make the necessary calculations and report the result to the Committee's 7th session.*

This calculation was subsequently approved by the Executive Committee in a decision taken at its 7th session, held from 3 to 6 April 2000, and that decision was noted in the Record of that session (document 92FUND/EXC.7/5):

- 3.3.23 *... The Committee endorsed the Director's calculation of the conversion on the basis of the rates applicable on that day, giving 135 million SDR = FFr 1 211 966 881.*

The October 2000 session of the Assembly of the IOPC Fund considered the reports of the Executive Committee on the sessions held over the preceding twelve months and approved them (document 92FUND/A.5/28, paragraph 20.2):

- 20.2 *The Assembly approved the reports of the Executive Committee and expressed its gratitude to the Committee's Chairman for the work of the Committee during this period.*

To summarise, the accusations are entirely without foundation. The decision fixing the date for the conversion of SDRs into French francs was taken by the Executive Committee and not by the Director. The Director has therefore not violated any convention. The Executive Committee had the authority, delegated to it by the Assembly, to take that decision.

Any further information is available from the  
Press Office in France (Tel.: 01 44 51 66 03)