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INCIDENTS INVOLVING THE 1992 FUND

ERIKA – CLAIMS SITUATION, LEVEL OF PAYMENTS AND ADMISSIBILITY OF CERTAIN CLAIMS

Note by the Director

Summary:

As at 11 October 2001, 73% of all claims had been assessed. Payments totalling FFr157 million (£15 million) had been made in respect of 2 857 claims.

The Director has reconsidered the likely total amount of all admissible claims arising from this incident. He proposes that the level of the 1992 Fund's payments should be maintained at 80% of the loss or damage suffered by the respective claimants as assessed by the 1992 Fund's experts.

Claims for reduction in tourism tax revenue and airport tax revenue are presented for consideration as to their admissibility.

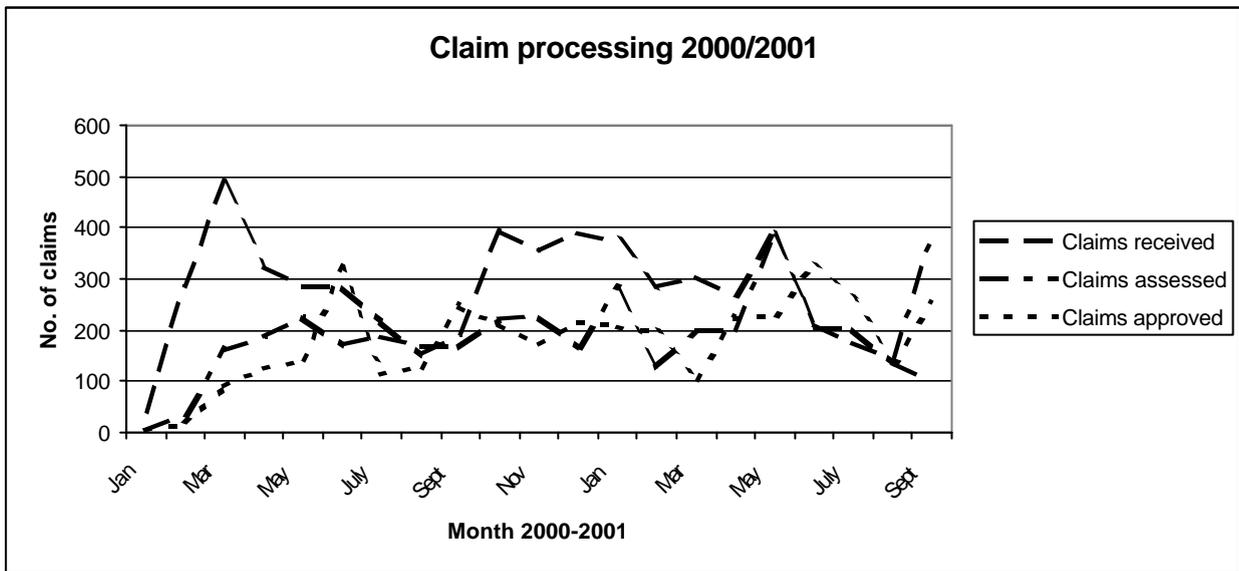
Action to be taken:

- (1) to review the level of the 1992 Fund's payments;
- (2) to consider the admissibility of the claims for reduction in the revenue from tourism and airport taxes.

1 Claims situation

- 1.1 As at 11 October 2001, 5 637 claims for compensation had been submitted for a total of FFr863 million (£82 million). Of these claims 1614 (29%) were presented during the period March – October 2001.
- 1.2 Some 4 096 claims totalling FFr469 million (£45 million) had been assessed at a total of FFr280 million (£27 million). Assessments had thus been carried out of 73% of the total number of 5 637 claims received.

- 1.3 Two hundred and eighty-three claims, totalling FFr36 million (£3.4 million), had been rejected. Many of the rejected claims are being reassessed in the light of additional documentation provided by the claimants.
- 1.4 Payments for compensation had been made in respect of 2 857 claims for a total of FFr157 million (£15 million).
- 1.5 A further 1 541 claims, totalling FFr394 million (£38 million), were either in the process of being assessed or were awaiting claimants providing further information necessary for the completion of the assessment.
- 1.6 The graph below shows the total number of claims received each month against those assessed and approved during January 2000 - September 2001. It can be seen that the rate at which claims are being assessed has recently started to exceed considerably the rate at which claims are received.



- 1.7 The table below gives details of the processing of claims in various categories.

Claims submitted by 11 October 2001

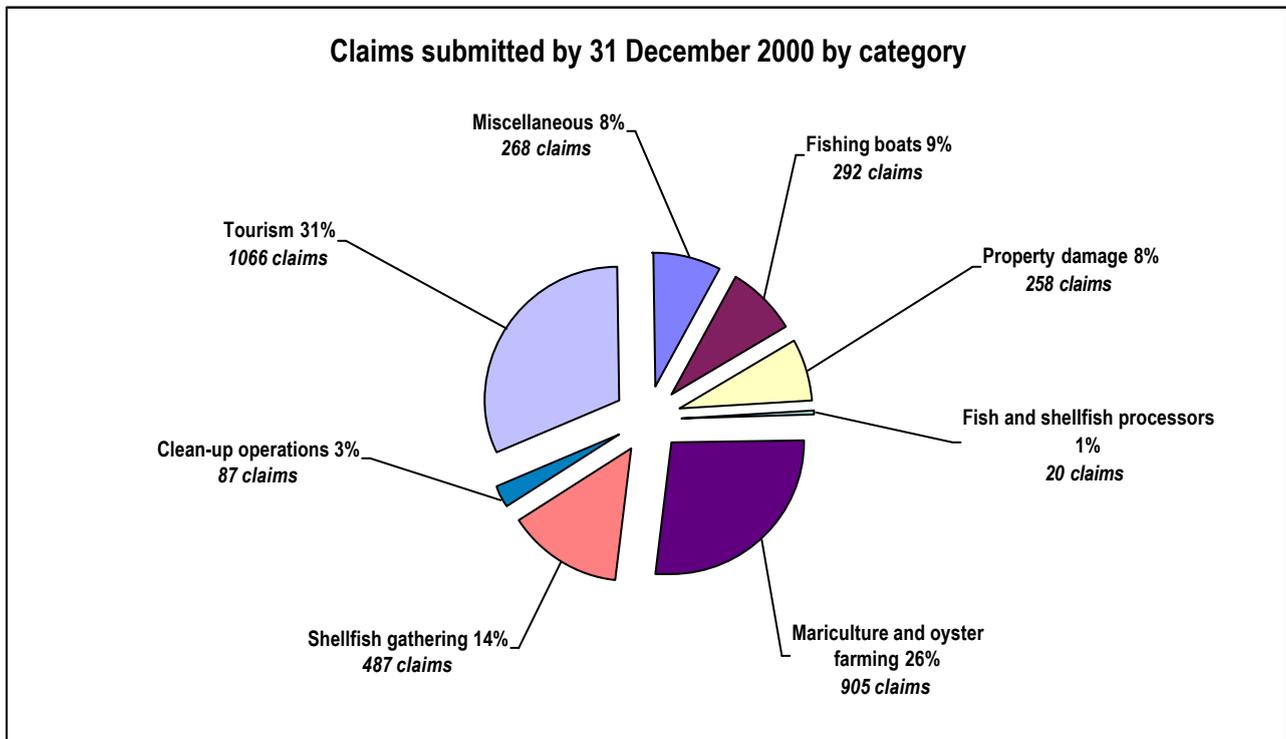
Category	Claims submitted	Claims assessed		Payments made		Claims rejected	
		Claims assessed	%	Payments made	%	Claims rejected	%
Mariculture and oyster farming	990	951	96%	658	66%	44	4%
Shellfish gathering	494	458	93%	305	62%	68	14%
Fishing boats	311	293	94%	248	80%	16	5%
Fish and shellfish processors	30	27	90%	21	70%	3	10%
Tourism	2703	1637	61%	1023	38%	128	5%
Property damage	538	227	42%	154	29%	11	2%
Clean-up operations	107	65	61%	49	46%	2	2%
Miscellaneous	464	438	94%	399	86%	11	2%
Total	5637	4096	73%	2857	51%	283	5%

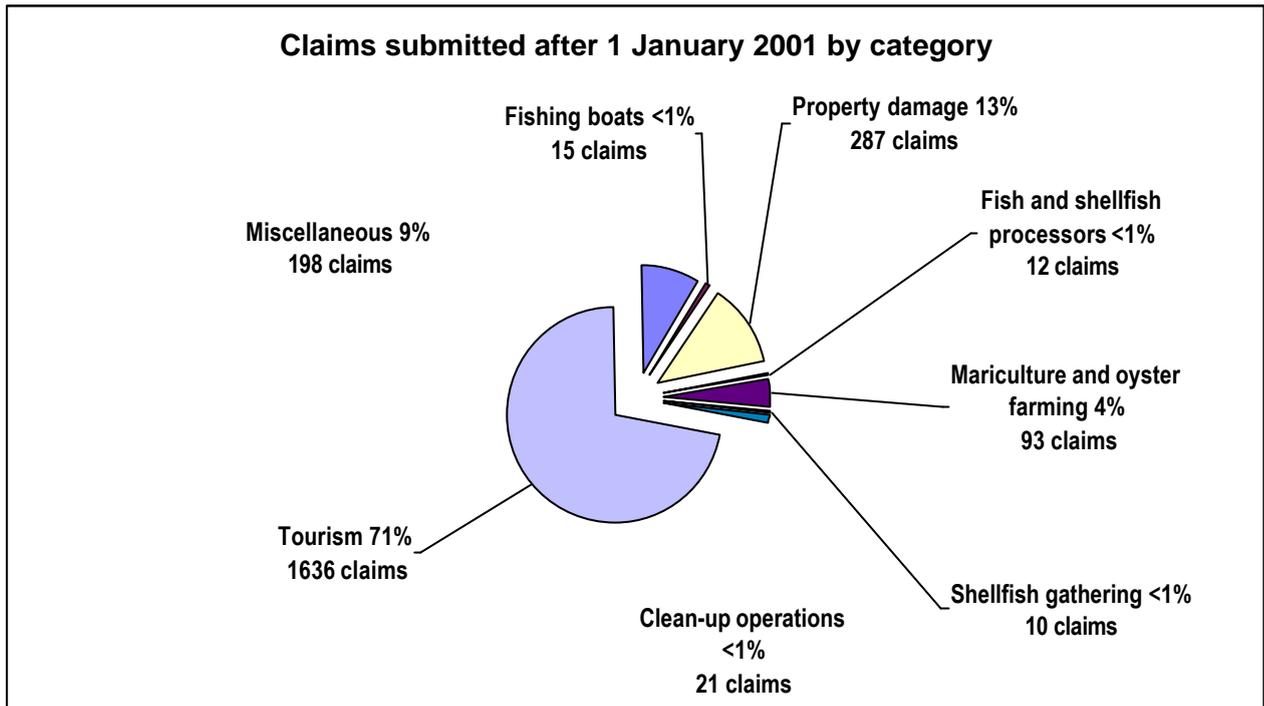
Payments authorised and made by 11 October 2001

Category	Payments authorised		Payments made	
Mariculture and oyster farming	812	28,054,626 F	658	21,357,476 F
Shellfish gathering	370	3,575,508 F	305	3,072,493 F
Fishing boats	271	4,319,286 F	248	4,001,594 F
Fish and shellfish processors	21	2,850,894 F	21	2,850,894 F
Tourism	1230	104,278,206 F	1023	93,866,261 F
Property damage	199	2,628,550 F	154	2,219,689 F
Clean-up operations	58	10,241,990 F	49	8,809,478 F
Miscellaneous	411	26,076,397 F	399	20,644,968 F
Total	3372	182,025,457 F	2857	156,822,853 F

1.8 As is shown in the tables, there is a significant difference between the various categories of claims as regards the progress made in the claims assessment. In certain categories over 90% of all claims have been assessed and for most categories payments have been made in respect of over 50% of claims. The majority of the claims in these categories were presented fairly early. On the other hand, in the tourism sector 61% of the claims have been assessed, but of the 2 703 claims in that sector, 1 068 (ie over 40%) were presented after 1 March 2001. There is still a delay between the time of approving and the time of paying claims, mainly as a result of claimants not having accepted the approved amounts.

1.9 The graphs below show the distribution of different categories of claims received prior to and after 1 January 2001. It can be seen that post January 2001 some 71% of all claims related to losses in the tourism sector.





2 The Executive Committee's consideration of the level of payments up to its 12th session

- 2.1 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 June 2000 study') the estimated total amount of the admissible claims in the tourism industry fell within the range of FFr800 – 1 500 million (£70 – 144 million).
- 2.2 In the view of the uncertainty as to the total amount arising from the *Erika* incident, the Executive Committee decided, at its 8th session, that the payments by the 1992 Fund should be limited to 50% of the amount of the loss or damage actually suffered by the respective claimants, as assessed by the 1992 Fund's experts (document 92FUND/EXC.8/8, paragraph 3.38).
- 2.3 A further study was carried out within the Ministry of Economy, Finance and Industry in October 2000. This study ('the October 2000 study') found that the total amount of the losses in the tourism sector admissible for compensation could be estimated at FFr1 096 million (£103 million).
- 2.4 At its 9th session held in October 2000 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).
- 2.5 A further study was carried out within the Ministry of Economy, Finance and Industry in January 2001 ('the January 2001 study'). In that study the maximum amount of admissible claims in the tourism sector was assessed at between FFr1 100 million (£103 million) and FFr1 200 million (£112 million).
- 2.6 In the light of the January 2001 study and the opinion of the 1992 Fund's experts, the Executive Committee decided, at its 11th session held in January 2001, to increase the level of the 1992 Fund's payments from 50% to 60% of the amount of the damage actually suffered by the respective claimants (document 92FUND/EXC.11/6, paragraph 3.58).

2.7 The Executive Committee decided at its 12th session, held in March 2001, to maintain the level of payments at 60% (document 92FUND/EXC.12/4, paragraph 3.57).

3 June 2001 study

3.1 A new study was carried out within the Ministry of Economy, Finance and Industry in June 2001 ('the June 2001 study'). In this study the total amount of the losses admissible for compensation in the tourism industry was estimated at between FFr363 million (£34 million) and FFr503 million (£47 million).

3.2 The June 2001 study was based on declarations for VAT for businesses and on the claims actually submitted so far in respect of holiday rentals, in particular self-catering apartments.

3.3 In the June 2001 study it was recalled that the previous studies, and in particular the January 2001 study, were based on two methods, the demand approach^{<1>} and the supply approach^{<2>}. It was submitted in the June 2001 study that the only method which could provide an estimate close to reality was the one based on the declarations by the businesses themselves.

3.4 In the June 2001 study a comparison was made between the VAT declarations for the calendar years 1999 and 2000 for businesses in the tourism sector in the five departments concerned which made it possible to compare the development of the turnover of these businesses. However, although in the case of small businesses which are liable to pay VAT the VAT declarations were incomplete, it was considered that the declarations submitted from this group of businesses were sufficiently representative.

3.5 As regards self-catering apartments which are not subject to VAT, it was stated in the June 2001 study that - contrary to the approach taken in the January 2001 study - it was unlikely that all those who had suffered losses due to a reduction in tourists visiting the area would claim compensation. It was pointed out that this sector comprises mainly individuals who were not obliged to keep accounts and had no reason to delay the submission of claims once the tourism season was finished. For this reason, it was assumed that the great majority of the potential claimants in this group would have presented their claims by mid-June 2001 and that those who would submit claims in the future would represent only a small part of the potential claimants in this group. In the study it was pointed out that by 15 June 2001 less than 500 claims for a total of FFr13.2 million (£1.2 million) had been received from this group of claimants. The study gave the following reasons for the low number of claims from this sector:

- there were significant variations in the letting of the apartments from year to year which made it difficult to present claims with comparative data for previous years;
- since the individuals in question were not subject to VAT, they had no documents to support the alleged losses;
- many individuals had only let their apartments occasionally which made it difficult to prove an actual loss;
- many individuals in this group might have been reluctant to present claims for a few thousand francs.

It was suggested in the study that the total amount of the claims in this group would not exceed FFr30 million (£2.8 million).

<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.

- 3.6 As in the previous studies, the June 2001 study was based on the IOPC Fund's criteria for the admissibility of claims, in particular as regards the geographical location of the businesses in question. It was pointed out that in the five departments affected by the *Erika* incident the major part of the businesses were located in the interior. It was assumed that the major part of the losses admissible for compensation related to businesses in the coastal areas. The turnover figures of the businesses whose claims under the Fund's criteria would be admissible were adjusted to obtain the reduction in profit which was the basis for the calculation of compensation.
- 3.7 The June 2001 study estimated the total amount of the losses admissible for compensation in the tourism sector at between FFr363 million (£34 million) and FFr503 million (£47 million).
- 3.8 It was pointed out in the study that the number of claims from the tourism sector had been falling in recent months, that the claims submitted so far only totalled FFr520 million (£49 million) and that claims were rarely accepted at 100% of the claimed amounts.
- 3.9 The study also considered the likelihood of claims being submitted for losses incurred in the tourism sector during 2001. It was stated that, although in the IOPC Funds' experience it was unusual that losses in the tourism sector related to more than one year, such losses were possible if the contamination continued. It was mentioned that some claims had already been submitted for losses suffered in 2001. However, it was stated that the Observatoire national du tourisme had predicted that the tourist season along the Atlantic coast would be good in the year 2001 and it was suggested that there was no risk of any significant impact of the *Erika* incident in 2001.

4 The Executive Committee's considerations at its 13th session

- 4.1 The Executive Committee noted that the figures for the clean-up operation claims and the claims in the fishery and mariculture sectors had been estimated by the 1992 Fund at FFr150 - 200 million (£14 - 19 million) and FFr125 million (£12 million), respectively, ie at a total of FFr275 - 325 million (£26 - 30 million). It was further noted that the June 2001 study carried out within the Ministry of Economy, Finance and Industry had estimated the total amount of the admissible claims in the tourism sector at some FFr500 million (£47 million). The Committee noted that if this estimate was correct, the total admissible claims would be in the region of FFr 800 million (£75 million) and it would be possible to fix the level of the 1992 Fund's payment at 100% of the proven loss or damage suffered by the individual claimants.
- 4.2 The Executive Committee noted, however, that there remained some significant uncertainties in the estimates made in the June 2001 study, as indicated by the 1992 Fund's experts. It was noted that no allowance had been made in the study for publicity campaigns. It was further noted that the June 2001 study was based on the criteria for admissibility applied by the 1992 Fund. It was noted however that the Director had been advised that the French courts might adopt a more extensive approach in their interpretation of the notion of 'pollution damage' in respect of pure economic loss, and that it was not possible to predict the consequences of such an approach. The Committee further noted that there was also a risk that re-oiling of the coastline would take place, which could cause further losses, in particular in the fishery and mariculture sectors, but in the Director's view this risk had decreased considerably, and that it was in any event highly unlikely that there would be any major re-oiling.
- 4.3 The Executive Committee noted that, in the Director's view, an important element was the claims actually submitted so far. It was noted that the total amount of all claims received in the Claims Handling Office in Lorient as of 20 June 2001 was FFr765 million (£72 million), of which FFr525 million (£49 million) related to tourism. It was recalled that experience had shown that claims were normally not approved at 100% of the claimed amount. It was also noted however that there were also some significant claims from ferry companies and tourism operators outside the affected area which had not been taken into account in the June 2001 study. It was noted that in the Director's view it was doubtful whether such claims were admissible, but that some allowance would nevertheless have to be made for claims of this type. It was further noted that

although generally the 2001 tourism season was unlikely to be affected by the *Erika* incident to any significant degree, there might be admissible claims relating to that season from areas where clean-up was still being carried out. The Committee also noted that claims could be brought against the 1992 Fund up to the end of the time bar period, ie within three years of the date when the damage occurred or within six years of the date of the incident.

- 4.4 The Committee noted that the claims in the sectors other than tourism had been estimated at some FFr300 million (£29 million), that the Director believed that the estimate in the June 2001 study for the tourism claims of FFr500 million (£47 million) might be on the low side and that he considered that a figure of FFr700 million (£66 million) would be prudent. It was noted that the Director took the view that it was necessary to take into account costs for marketing campaigns of some FFr100 million (£9.4 million) and that it would be prudent to include an amount of FFr100 million (£9.4 million) for losses in the tourism sector during 2001 plus a general safety margin of FFr200 million (£18.8 million). The Committee noted that taking the above contingencies into consideration the estimated total of the admissible claims would be in the region of FFr1 400 million (£131 million), which in the Director's view meant that the level of the 1992 Fund's payments could be increased to 80% of the proven loss or damage suffered by the individual claimants, as assessed by the 1992 Fund.
- 4.5 In the light of the foregoing the Executive Committee decided to increase the level of the 1992 Fund's payments to 80% of the amount of the damage actually suffered by the respective claimants, as assessed by the 1992 Fund. It was agreed that the level of payments should be reviewed at the Committee's 14th session (document 92FUND/EXC.13/7, paragraph 3.2.42).

5 Further study by the French authorities

- 5.1 A supplementary study has been carried out in October 2001 within the French Ministry of Economy, Finance and Industry ("the October 2001 study").
- 5.2 The June 2001 study was based on exhaustive research, including an analysis of actual trading figures for turnover declared by tourism businesses in the affected area. In analysing VAT declarations, the only assumption made by the study was regarding the declarations from "very small tourism businesses" where the results of only a sample (10%) of businesses in this particular category were available. The October 2001 study has been able to take account of VAT declarations made by tourism businesses of all sizes for the year 2000.
- 5.3 It is stated in the October 2001 study that the analysis of definitive results for VAT declarations from tourism businesses in the affected area confirms the estimate made in the June 2001 study of a total amount of the losses admissible for compensation in the tourism industry of FFr500 million (£47 million). The analysis of the full results for very small businesses has only added FFr3.4 million (£320 000) to the estimate made in June 2001.
- 5.4 In the October 2001 study an analysis has also been made of the number and amount of the claims for compensation received up to 5 October 2001 from tourism businesses in the affected area obliged to make VAT declarations. It is noted that these claims total FFr498 million (£47 million). It is also noted that, to date, claims have been assessed at an average of 67.6% of the amount claimed. After applying this percentage to the tourism claims received from VAT registered businesses in France together with other types of tourism claims received, such as claims from businesses not subject to VAT and claims for exceptional spending by tourism organisations on promotional campaigns, it is stated in the study that a total estimate of FFr500 million (£47 million) leaves sufficient margin of up to FFr100 million (£9.4 million) for any new claims.
- 5.5 The October 2001 study has also analysed the performance of hotels and campsites in the affected area during the 2001 tourism season. According to the study, early figures on occupancy for hotels in the affected area for the period January - August 2001 and for campsites for the period

May - August 2001 show signs of recovery compared with the year 2000 (+2.5% for hotels and +10.7% for camp sites across the five departments concerned). It is noted that these results are down globally by 9.9% compared to 1999. However, it is pointed out that the areas most seriously affected by pollution, for example Loire Atlantique and Vendée, have shown the strongest recovery (+26.2% and +17.2% respectively compared with 2000).

- 5.6 It is mentioned in the October 2001 study that most tourist organisations which were consulted had reported an encouraging recovery of the overseas market and that reports of a satisfactory 2001 season had been received from most tourism professionals. Reference is made to factors other than the *Erika* incident influencing tourism activity in 2001, notably poor weather in July, and other less quantifiable factors such as the impact of the 35-hour working week in France and the impact of foot and mouth disease and BSE. It is stated in the study that, except for some cases, there is little evidence which could support claims for tourism losses resulting from the *Erika* incident for the 2001 season.
- 5.7 The October 2001 study confirms the estimate of FFr500 million (£47 million) of admissible losses from the tourism sector made in the June 2001 study. By adding a provision of FFr50 million (£4.7 million) for "out of area claims" and adding an estimate of FFr300 million (£28.3 million) for claims from other sectors outside tourism, the study arrives at a total of FFr850 million (£81 million).
- 5.8 The study concludes that compensation at 100% is therefore possible with a safety margin of FFr350 million (£33 million).

6 Opinion by the 1992 Fund's experts on the October 2001 study

- 6.1 As the October 2001 study was received only on 9 October 2001, the 1992 Fund's experts have had only very limited time to examine it. The experts' observations can be summarised as follows.
- 6.2 The 1992 Fund's experts broadly agree with the overall estimate of the maximum total tourism losses admissible for compensation at around FFr500 million (£47 million).
- 6.3 In making this latest assessment, the Ministry of Economy, Finance and Industry has had access to the definitive results of VAT declarations by all eligible tourism businesses for the full year 2000 compared with those of 1999. The Ministry has also been able to compare its estimates with the volume and amount of the compensation claims received so far. The 1992 Fund's experts broadly agree with the interpretation made in the study of this information.
- 6.4 In the October 2001 study it is stated that out of over 10 000 tourism businesses identified by their VAT declarations as having sustained a reduction in turnover for 2000, only 1 788 have actually presented claims. It would, in the experts' view, be expected that, 21 months after the incident, tourism businesses would have been able to assess the impact of the *Erika* incident on their trading in 2000. The experts therefore assume that the large majority of those which suffered significant economic loss as a result of the *Erika* incident and intended to claim would have already done so.
- 6.5 The monitoring of hotels and camp site occupancy statistics for the period January to August 2001 confirms the 1992 Fund's experts' impression that the tourism economy in the affected area has recovered, although it may not be back to 1999 levels overall. The observations made by a variety of tourism organisations confirm the experts' view that the *Erika* incident has not had a significant impact on the 2001 season and that there are other factors that may have impacted on 2001 performance. However the Claims Handling Office has received requests for claim forms for the 2001 tourism season and, in the experts' view, claims for losses during the 2001 season may be admissible in a limited number of cases where the claimant's business is located in an area where the shoreline has remained contaminated.

- 6.6 In the evaluation of the likely level of admissible tourism losses at FFr500 million (£47 million), the October 2001 study has not taken into consideration that claims may be presented by tourist organisations for exceptional spending on promotional campaigns in 2001. The Fund's experts suggest that whilst such claims may not be admissible for compensation, such claims may be forthcoming. The October 2001 study has not made any assumption as to the approach of the French courts and their interpretation of the concept of pollution damage.
- 6.7 In the view of the 1992 Fund's experts, these factors may have led the October 2001 study to underestimate the overall level of claims, but this under-estimate may well be offset by a significant proportion of potential claimants deciding not to present claims. It appears that many small tourism or tourism-related businesses consider the task and process involved in submitting a claim too complicated or laborious or may result in loss of commercial confidentiality. The increase in the level of payments from 60% to 80% and the introduction of the French Government's top-up scheme appear not to have resulted in potential claimants changing their opinion in this regard.

7 Director's considerations

- 7.1 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.
- 7.2 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.
- 7.3 As reported to the Executive Committee in June 2001, the figures for the clean-up operation claims and the admissible 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 at a total of FFr275 - 325 million (£26 – 31 million). The October 2001 study carried out within the Ministry of Economy, Finance and Industry estimates the total amount of the admissible claims in the tourism sector at some FFr500 million (£47 million), as did the June 2001 study. If this estimate is correct, the total admissible claims would be in the region of FFr 800 million (£75 million). Should this figure be correct, it would be possible to fix the level of the 1992 Fund's payment at 100% of the proven loss or damage suffered by the individual claimants.
- 7.4 It should be noted, however, that although the uncertainties inherent in the previous estimates have been reduced considerably, there still remain some uncertainties in the estimates made in the October 2001 study. It is noted that less than 20% of businesses known to have sustained a reduction in turnover on the basis of VAT declarations have submitted claims. However, these businesses have another 14 months in which to file claims.
- 7.5 The October 2001 study is based on the criteria for admissibility applied by the 1992 Fund. As previously reported to the Executive Committee, the Director has been advised, however, that the French courts might adopt 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.
- 7.6 There is also a risk that re-oiling of the coastline will take place, which could cause further losses, in particular in the fishery and mariculture sectors, but in the Director's view this risk has decreased considerably, and it is in any event highly unlikely that there would be any major re-oiling.
- 7.7 An important element is, in the Director's view, the claims actually submitted so far. The total amount of all claims received in the Claims Handling Office as at 11 October 2001 is

FFr863 million (£82 million), of which FFr598 million (£57 million) relates to tourism. Experience shows that claims are normally not approved at 100% of the claimed amount. However, there are also some significant claims from ferry companies and tourism operators outside the affected area. The October 2001 study only makes an allowance of FFr50 million for such claims. It is doubtful in the Director's view whether such claims are admissible, but a significant allowance will nevertheless have to be made for claims of this type. Although the outcome of the 2001 tourism season is not yet known in any detail, it appears that it was relatively good. It is unlikely therefore that the 2001 tourism season has been affected by the *Erika* incident to any significant degree, but there may nevertheless be admissible claims relating to that season from areas where clean-up was still being carried out. There may also be claims for publicity campaigns in 2001, and the October 2001 study does not make any allowance for such claims. It should be noted that claims can be brought against the 1992 Fund up to the end of the time bar period, ie within three years of the date when the damage occurred or within six years of the date of the incident.

- 7.8 As mentioned above, the claims in the sectors other than tourism have been estimated at some FFr275 - 325 million (£26 - 31 million). The Director believes that the estimate in the October 2001 study for the tourism claims of FFr500 million (£47 million) may still be on the low side and would consider that a figure of FFr700 million (£66 million) would be prudent. He takes the view that it is advisable to include an amount of FFr100 million (£9.4 million) for losses in the tourism sector during 2001. He considers that it is also necessary to make an additional allowance for marketing campaigns of some FFr100 million (£9.4 million). As stated at the Executive Committee's 13th session, the Director believes that it would be prudent to add a general safety margin of FFr200 million (£18.8 million). The estimated total admissible claims would then be in the region of FFr1 400 million (£131 million), ie the same figure as the one given by the Director at the Executive Committee's 12th session.
- 7.9 In the light of the remaining uncertainties as to the level of claims arising out of the *Erika* incident, the Director proposes that the level of payments should be maintained for the time being at 80% of the amount of the damage actually suffered by the respective claimants as assessed by the experts engaged by the 1992 Fund and Steamship Mutual. He also proposes that the level of payments should be reviewed at the Committee's 15th session.

8 Claims for compensation

8.1 Claims for reduction in tourism tax

- 8.1.1 Four communes have submitted claims for reduction in revenues from tourism tax (taxe de séjour), namely Locmariaquer (FFr47 612.05), Longeville sur Mer (FFr85 816), La Faute sur Mer (FFr39 542) and Les Sables d'Olonne (FFr110 781).
- 8.1.2 Tourism tax is a tax which may be levied by communes that are recognised tourism resorts and destinations. The level of the tax is fixed annually by the commune. The tax is levied at a fixed amount per visitor per night of stay, the amount varying dependent on the type of accommodation. It is understood that the levy is not charged in respect of business visitors. The revenue from the tourism tax is used by the commune to support costs of activities and services which are related to levels of tourism in the commune, *inter alia* beach cleaning, rubbish collection, information and local tourism offices.
- 8.1.3 An initial examination of the claims shows that the decrease in tourism tax revenue from 1999 to 2000 in these four communes falls within a range of 9-16%, broadly comparable with the estimated level of decrease in tourism economic activity in 2000 in the areas affected by the *Erika* incident.

- 8.1.4 The question has arisen whether claims for reduction in tourism tax revenue are admissible for compensation. In this regard reference should be made to decisions taken by the 1971 Fund Executive Committee in previous cases.
- 8.1.5 In the *Tanio* case (France 1980), the 1971 Fund Executive Committee rejected a claim from a commune for loss of tax revenue due to a reduction in the income of businessmen as a result of the incident. The Committee stated that it might be very difficult for a public authority to prove that a loss of tax revenue had actually occurred as a direct result of a pollution incident. The Committee considered that the documentation submitted in support of this claim was insufficient (documents FUND/EXC.10/5, paragraph 3.3.5 and FUND/EXC.10/WP.1, paragraph 2.3).
- 8.1.6 In the context of the *Haven* incident (Italy, 1991), claims were submitted for losses suffered by public bodies as a result of reduced tourism activity.
- 8.1.7 The City of Cannes (France) submitted a claim which, *inter alia*, related to loss of income resulting from a reduction of tourism during 1991. The claim listed various kinds of losses, as follows:

	FFr
(a) loss of professional tax	35 000 000
(b) loss of tax on casinos	11 000 000
(c) loss of tax on individual tourists	1 800 000
(d) loss of additional tax on registration	4 200 000
(e) loss of tax on various entertainments	<u>3 900 000</u>
	55 900 000

- 8.1.8 The Executive Committee took the view that the city of Cannes had not shown that the alleged loss of tax revenue from tourism resulted from the *Haven* incident. For this reason, the Committee considered that this claim should be rejected (document FUND/EXC.35/10, paragraph 3.2.18).
- 8.1.9 A claim relating to alleged loss of tourist tax resulting from a reduction in tourist activity in the amount of FFr350 000 (£33 000) was submitted by the commune of Lavandou in France. The 1971 Fund Executive Committee considered that the commune had not shown that the alleged loss was caused by the *Haven* incident and that this claim should therefore be rejected (document FUND/EXC.35/10, paragraph 3.2.19).
- 8.1.10 The French observer delegation expressed the view that the rejection of these claims could only be justified by the fact that the losses in respect of which the city of Cannes and the commune of Lavandou claimed compensation could not be accepted, on the basis of the supporting documents, as losses caused by contamination, ie that the losses resulted from a reduction in tourism significantly greater than the normal fluctuation from one year to another. That delegation noted that, if this was not the reason for rejection, the rejection was at variance with the position taken by the 1971 Fund in previous cases. It was maintained by that delegation that communes which depended only on beach tourism and which could not offset the losses of taxes on tourism by other income would suffer an economic loss which should be compensated if there was a reasonable proximity between the contamination and loss (document FUND/EXC.35/10, paragraph 3.2.20).
- 8.1.11 As regards the claims submitted by the French municipalities in the *Erika* case, the Director takes the view that, contrary to what was the case in respect of the claims rejected in the *Tanio* and *Haven* cases, it is clear that the reduction in tourism tax revenue was largely as a result of the reduction in tourism caused by the *Erika* incident. The Director considers therefore that there is a reasonable degree of proximity between the reduction in tourism tax revenue and the *Erika* incident. For this reason the Director takes the view that these claims should be considered admissible in principle.

8.1.12 If the Executive Committee were to agree with the Director's approach, it would be necessary for the purpose of assessing the quantum of the loss to consider to what extent the reduction is greater than normal fluctuation in tourism tax from one year to another. In assessing claims it will be necessary to take into account also any potential savings of the costs as a result of the decrease in the number of tourists.

8.2 Claim for reduction in airport tax revenue

8.2.1 The Chambre de Commerce et d'Industrie of Morbihan, which operates the airport of Lorient Lann Bihoué, has presented a claim for FFr336 739 (£32 000) for reduction in the revenue from airport taxes during 2000. The airport tax is levied at FFr42.06 per passenger, and it is maintained that there was a reduction of 8 007 passengers during 2000 compared to 1999.

8.2.2 Historical records show that the number of passengers at the airport varies by over 5% from one year to another, compared to a decrease of 3% from 1999 to 2000. It should also be noted that Lorient is a domestic airport for which tourist passengers are of only limited importance.

8.2.3 For these reasons, the Director considers that it has not been shown that the reduction in passengers for 1999 to 2000 and the ensuing reduction in airport tax revenue were caused by the *Erika* incident. He proposes therefore that the claim should be rejected.

8.3 Claim by the owner of a taxiboat

8.3.1 At its 9th session, held in October 2000, the Executive Committee considered a legal action taken by way of summary proceedings by the owner of a taxi boat in Concarneau against the shipowner, the management company of the *Erika*, the Steamship Mutual and Total Fina in the Tribunal de Commerce in Dunkirk, claiming compensation of FFr1 million (£95 000) for loss of income for three years as a result of the incident. In his submission to the Court the claimant/plaintiff had stated that the Claims Handling Office had offered him insufficient, if not 'ridiculous', compensation. In fact this claimant had not presented a claim to the Claims Handling Office.

8.3.2 The 1992 Fund intervened in the proceedings on 31 March 2000, pursuant to Article 7.4 of the 1992 Fund Convention, in order to protect the Fund's interests (cf Article 7.6).

8.3.3 In its submission to the Court the 1992 Fund drew attention to the fact that, according to the documents presented to the Court by the owner of the taxi boat (in particular auditors' reports on previous years' accounts), the boat owner did not have a good arguable case, which was the condition under the French Code of Civil Procedure for a claimant to be able to use summary proceedings. The Court was therefore requested to decline jurisdiction.

8.3.4 In a decision rendered on 28 April 2000 the Court declined jurisdiction on the ground that the claimant had not presented a good arguable case. The Court also referred to the fact that the claimant had not previously presented any claim to the Claims Handling Office.

8.3.5 The boat owner subsequently brought legal action by way of summary proceedings in the Tribunal de Grande Instance des Sables d'Olonne against the four defendants referred to above, claiming compensation of FFr1 million (£95 000).

8.3.6 In a judgement rendered on 5 September 2000 the Tribunal in Sables d'Olonne declined jurisdiction on the same grounds as those set out above. The Tribunal appointed a court expert to assess the loss actually suffered by the claimant.

8.3.7 The owner of the taxi boat submitted evidence to the court expert demonstrating that until autumn 1999, a few months before the *Erika* incident, he was involved in the transport of tourists in the area affected by the spill. In his submissions to the court expert he provided evidence showing that the area where he would normally carry out his business activity was polluted and that the

spill had had a negative impact on his normal business activity. He also provided accounting data, including turnover and profit and loss accounts for the years 1994 to 1999.

- 8.3.8 In his report, issued in August 2001, after considering the additional evidence submitted, the court expert concluded that there was a link of causation between the loss of income suffered by the owner of the taxi boat and the *Erika* incident. The court expert quantified the loss of income at between FFr340 000 (£32 000) and FFr503 000 (£50 000).
- 8.3.9 Based on the documentation submitted to the court expert, the Steamship Mutual and the 1992 Fund assessed the loss of income suffered by the owner of the taxi boat during the 2000 tourist season at FFr445 000 (£43 000). The owner of the taxi boat agreed with this assessment and the claim was settled at that amount. The amount of FFr356 000 (£34 000), ie 80% of the settlement amount, was paid to the claimant on 27 August 2001.

9 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 decide on the level of the 1992 Fund's payments;
 - (c) to consider the admissibility of the claims for reduction in tourism tax revenue; and
 - (d) to consider the admissibility of a claim for reduction in airport tax revenue.
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