



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUND 1992

EXECUTIVE COMMITTEE  
16th session  
Agenda item 3

92FUND/EXC.16/3  
8 April 2002  
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## INCIDENTS INVOLVING THE 1992 FUND

### ERIKA

#### Note by the Director

**Summary:**

About 19 800 tonnes of heavy fuel oil was spilled from the *Erika* as it sank, after breaking up in severe weather on 12 December 1999. The sunken bow section contained some 6400 tonnes of cargo and the stern section a further 4 700 tonnes. Operations to pump the remaining oil from the wreck were successfully completed by September 2000. The clean-up operations have been completed except for a few sites.

In view of the uncertainty as to the level of claims arising from the *Erika* incident, the 1992 Fund's payments are for the time being limited to 80% of the amount of the damage actually suffered by the respective claimants as assessed by the 1992 Fund's experts.

A number of public bodies and private entities have taken legal action in France against Total Fina, the owner of the *Erika*, the Steamship Mutual P & I Club, the vessel's management company and the classification society. The classification society has taken legal action in Italy against *inter alia* the 1992 Fund requesting a declaration that the society was not liable for the incident. The 1992 Fund has taken recourse action in France against the classification society.

**Action to be taken:** Information to be noted.

### 1 The incident

- 1.1 On 12 December 1999 the Maltese-registered tanker *Erika* (19 666 GT) broke in two in the Bay of Biscay, some 60 nautical miles off the coast of Brittany, France. All members of the crew were rescued by the French marine rescue services.

- 1.2 The tanker was carrying a cargo of 31 000 tonnes of heavy fuel oil of which some 19 800 tonnes was spilled at the time of the incident. The bow section floated vertically for several hours before sinking during the night of 12 December in about 100 metres of water. A French salvage company succeeded in attaching a line to the stern section and attempted to tow it further off shore. However, during the morning of 13 December the stern section sank to a depth of 130 metres about 10 nautical miles from the bow section.
- 1.3 Some 6400 tonnes of cargo remained in the bow section and a further 4700 tonnes in the stern section.
- 1.4 The *Erika* was entered in the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).

## **2 Clean-up operations**

- 2.1 As for the clean-up operations up to October 2000 reference is made to document 92/FUND/EXC.9/7.
- 2.2 The clean-up operations have been completed except in respect of a few sites in two islands of Morbihan.
- 2.3 More than 200 000 tonnes of oily waste has been collected from shorelines and has been temporarily stockpiled. TotalFina SA, the French oil company, has engaged a contractor to deal with the disposal of the recovered waste and the operation is underway. Initial estimates of the cost of the waste disposal are in the region of FFr300 million (£28 million).
- 2.4 The administrative courts in Nantes and Poitiers appointed experts to carry out an investigation into the condition of the beaches before the incident and the type and extent of the pollution caused. The experts have presented reports to the courts on the results of their examination. The 1992 Fund has followed these investigations through its technical experts.

## **3 Impact of the spill**

- 3.1 As regards the impact of the spill in general, reference is made to document 92FUND/EXC.9/7.
- 3.2 Oil affected several important oyster and mussel fisheries. As a result of the monitoring programme put in place by the French authorities and the guidelines issued by the Agence Française de Sécurité Sanitaire des Aliments (AFSSA), in numerous areas cultivated and natural stocks of shellfish were found to have accumulated hydrocarbons exceeding acceptable limits, and the marketing of produce in these areas was banned. No fishing bans were imposed in respect of offshore fishing for pelagic fish and crustacea in view of the low levels of contamination of catches.
- 3.3 The shell fishing bans were progressively lifted during the summer of 2000, and by September 2000 all areas were open to fishing and harvesting of marine products, with the exception of a small area in Loire Atlantique where shellfish were still contaminated. This ban was lifted in September 2001.
- 3.4 Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid-May 2000 as a result of an improvement in sea water quality, and bans which were imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. A group of independent producers in Guérande tried to resume salt production but were unable to take in sufficient sea water to produce salt. Members of a co-operative who account for some 70% of the salt production in Guérande decided not to produce salt in 2000 on the grounds of protecting market confidence in the product.

- 3.5 At the request of the 1992 Fund and Steamship Mutual a court expert has been appointed to examine whether it was feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health. Documentation is being submitted to the court expert, whose report is expected in the near future.
- 3.6 Claims for lost salt production due to delays to the start of the 2000 season caused by the imposed ban on water intake have been received from producers (both independent and members of the co-operative) in Guérande and Noirmoutier.
- 3.7 The affected coastline supports an important tourist industry, particularly during the summer months, which was affected to varying degrees depending on location and type of activity during the 2000 tourism season. The indications are that the 2001 season was not affected to any significant degree. Nevertheless some claims may be submitted for losses incurred during the 2001 season in areas which remained contaminated.

#### **4 Cause of the incident**

- 4.1 Since the *Erika* was registered in Malta, the Malta Maritime Authority conducted a Flag State investigation into this incident. The Maltese Maritime Authority issued its report in September 2000.
- 4.2 An investigation was also carried out by the French Permanent Commission of Enquiry into Accidents at Sea (La Commission Permanente d'enquête sur les événements de mer, CPEM). The report of this investigation was published in December 2000.
- 4.3 The conclusion of these investigations are summarised in document 92FUND/EXC.14/5/Add.1.
- 4.4 The 1992 Fund's lawyers and the Fund's technical experts are studying the reports by the French Enquiry Commission and the Maltese authorities.
- 4.5 A criminal investigation into the cause of the incident is being carried out by an examining magistrate in Paris. During 2000 charges were brought against the master of the *Erika*, the representative of the registered owner (Tevere Shipping), the president of the management company (Panship Management and Services Srl), the management company itself, the deputy manager of Centre Régional Opérationnel de Surveillance et de Sauvetage (CROSS), three officers of the French Navy who were responsible for controlling the traffic off the coast of Brittany, the classification society (RINA) and one of RINA's managers. In December 2001 charges were brought against Total Fina and some of its senior staff on the basis of a report by an expert appointed by the Court. The investigation has not yet been completed.
- 4.6 At the request of a number of parties, the Commercial Court (Tribunal de Commerce) in Dunkirk appointed experts to investigate the cause of the incident ('expertise judiciaire'). The Court decided that the investigation should be carried out by a panel of four experts. Most of the interested parties have participated in the proceedings.
- 4.7 The 1992 Fund is following the investigations carried out by the court in Dunkirk through its French lawyers and technical experts.

#### **5 Removal of the oil remaining in the wreck**

- 5.1 The oil remaining in the two sections of the wreck was removed during the period 6 June - 15 September 2000. No significant quantities of oil escaped during the operations.
- 5.2 With respect to the oil removal operations reference is made to documents 92FUND/EXC.7/4, 92FUND/EXC.8/2 and 92FUND/EXC.9/7.

## **6 Limitation proceedings**

- 6.1 At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening the limitation proceedings. The Court determined the limitation amount applicable to the *Erika* at FFfr84 247 733<sup><1></sup> (£8.1 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by Steamship Mutual.
- 6.2 A group of claimants lodged an objection to the Court's acceptance of Steamship Mutual's letter of guarantee, maintaining that the limitation fund should have been constituted in cash. A court hearing was held on 31 May 2001. In June 2001, the Court declined to take jurisdiction of this matter.

## **7 Claims handling**

- 7.1 The Steamship Mutual and the 1992 Fund established a Claims Handling Office in Lorient, which opened on 12 January 2000. The Claims Handling Office, which has a staff of seven, serves as a focal point for the claimants and the technical experts engaged to examine the claims for compensation. The Office has a purely administrative role and does not carry out assessment of claims.
- 7.2 Assessment of clean-up claims has been carried out at an office set up in Brest.
- 7.3 Some 50 experts have been engaged to examine the claims relating to clean-up, fishing, mariculture and tourism.
- 7.4 Due to the volume of claims for compensation presented as a result of the *Erika* incident, particularly in the tourism sector, the 1992 Fund, with support from the firm of tourism experts engaged in France by the Fund and Steamship Mutual, has developed a computer programme to assist the experts in the assessment of claims for compensation. This programme became operational in May 2001. The programme makes it possible to compare data relating to new claims with data relating to claims previously assessed. If the data provided in respect of the claim under assessment are consistent with those in respect of previously-assessed similar claims in the same sector and geographical location, the time spent on the assessment process can be substantially reduced.

## **8 Attack on the Claims Handling Office in Lorient**

- 8.1 Threats and allegations have been made more or less continually, mainly by one individual, against staff at the Claims Handling Office in Lorient, against experts engaged by the Steamship Mutual and the 1992 Fund and against the Director.
- 8.2 Early in the morning of Saturday 15 December 2001, a person who had previously caused damage to the 1992 Fund's offices in Lorient and Brest drove a tractor with a front-end loader into the Claims Handling Office building in Lorient, demolishing a number of windows and destroying the door. The two police officers present outside the office were unable to prevent the attack, but arrested the attacker and took him into police custody. After being charged by the investigating judge (juge d'instruction) the person was released on 16 December. The judge issued an order prohibiting the person from visiting Lorient except to see his lawyer.
- 8.3 As a result of the serious damage caused to the Claims Handling Office, the Director decided to suspend provisionally the operations of the Office until the necessary repairs had been carried out.
- 8.4 On the day of the attack the 1992 Fund issued a press communiqué in France condemning the attack in the strongest possible terms. In the communiqué attention was drawn to the fact that this new attack was under no circumstances in the interest of the victims of the *Erika* incident but on

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<1> This amount corresponds to €12 843 484.

the contrary resulted in the provisional suspension of the operations of the Office until the premises and equipment had been repaired. It was stated that the Fund, together with the Claims Handling Office and experts involved, would make every effort to continue to carry out the task of the Fund which is to provide compensation to the victims of the *Erika* oil spill.

- 8.5 The Préfet of Morbihan also issued a statement the same day categorically condemning the attack on the Office.
- 8.6 On 17 December a joint Press Conference was held in Lorient by the Préfet and the Director. At the Press Conference the Préfet repeated his condemnation of the attack. The Director made a statement again condemning the attack and repeated that the attack was to the detriment of claimants but expressed the hope that the Office could resume its work as quickly as possible in order to enable the Fund to fulfil its mission with respect to the victims of the *Erika* incident.
- 8.7 On 18 December the Director visited the Ministry of Foreign Affairs, the Ministry of Economy, Finance and Industry and the Ministry of Interior in Paris to express his concerns. The following day a spokesman of the French Ministry of Foreign Affairs made a public declaration to the effect that representatives of these three ministries had reiterated the condemnation of the attack against the Office in Lorient.
- 8.8 The suspension of the operations of the Claims Handling Office necessitated by the attack has resulted in a delay in the payment of compensation to the victims of the *Erika* incident.
- 8.9 The Claims Handling Office in Lorient resumed its operation on 2 January 2002.
- 8.10 The 1992 Fund and the Steamship Mutual have pressed charges against the attacker.

## **9 Claims for compensation**

Information on the claims situation will be given in an addendum to this document.

## **10 Maximum amount available for compensation**

- 10.1 The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention is 135 million Special Drawing Rights (SDR) per incident, including the sum paid by the shipowner and his insurer (Article 4.4 of the 1992 Fund Convention). This amount shall 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 by the Assembly as to the first date of payment of compensation.
- 10.2 Applying the principles laid down by the Assembly in the *Nakhodka* case the Executive Committee decided in February 2000 that the conversion should be made using the rate of the SDR as at 15 February 2000 and instructed the Director to make the necessary calculations.
- 10.3 The Director's calculation gave 135 million SDR = FFfr1 211 966 811<sup><2></sup> (£113 million), and the Committee endorsed this calculation at its April 2000 session.
- 10.4 In September 2001 an association for the protection of the sea, 'Keep it Blue', joined by another entity, 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 Special Drawing Rights (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 and of having 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

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<2> This amount corresponds to €184 763 149.

when the Assembly had considered the matter, thereby depriving the victims of FFfr35 227 130 (£3.2 million).

- 10.5 These allegations were reported by the Director at the Executive Committee's October 2001 session. The ensuing discussion was summarised as follows in the Record of Decisions which was approved by the Committee:

The decision which fixed the date which should be used as a basis for conversion of SDR into French francs had been taken by the Executive Committee and not by the Director. Contrary to what was stated in the complaint, the Director had not violated any Convention but had 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 had been endorsed by the Executive Committee which, acting on the authority of the Assembly, had the power to take this decision. In its decision in the *Nakhodka* case, the Assembly had explicitly recognised that decisions on the date for conversion would be taken by the Executive Committee. The Assembly had approved the reports on the Executive Committee's sessions at which this issue was considered.

- 10.6 At its October 2001 session the Assembly endorsed the position taken by the Executive Committee (document 92FUND/A.6/28, paragraph 21.4).

## **11 Undertakings by Total Fina and the French Government**

- 11.1 In a letter to the Director, Total Fina undertook not to pursue against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer the claims relating to the cost of any inspections and the operations in respect of the wreck of the *Erika*, if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions, ie 135 million Special Drawing Rights (SDR). Total Fina made a corresponding undertaking in respect of the cost of the collection and disposal of the oily waste generated by the clean-up operations, of the cost of its participation in the beach clean-up up to a maximum of FFfr40 million and of the cost of a publicity campaign to restore the tourist image of the Atlantic coast up to a maximum of FFfr30 million.
- 11.2 The French delegation informed the Committee at its 6th session, held in April 2000 that the French Government also undertook not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. The delegation stated that this undertaking covered all the expenses incurred by the French State in combating the pollution, *inter alia* those expenses falling within the framework of Plan Polmar, including expenses incurred by local authorities paid or reimbursed through Plan Polmar. That delegation stated that the undertaking covered also all measures which the State might take in different sectors to reduce the consequences of the incident, including any publicity campaigns to this effect. That delegation made the point that the French Government's claims would rank before any claims by Total Fina if funds were available after all other claims had been paid in full.

## **12 Level of the 1992 Fund's payments**

### **12.1 Consideration by the Executive Committee at its previous sessions**

- 12.1.1 At its 8th session, held in June 2000, the Executive Committee decided that, in view of the uncertainty as to the total amount of the claims arising from the *Erika* incident, the payments by the 1992 Fund should for the time being 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 3.3.38).

- 12.1.2 At its 11th session, held in January 2001, the Executive Committee decided 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).
- 12.1.3 The Executive Committee decided at its 13th session, held in June 2001, to increase the level of payments to 80% (document 92FUND/EXC.13/7, paragraph 3.2.42).
- 12.1.4 The Executive Committee decided at its 14th session, held in October 2001, that in the light of the uncertainties that remained as to the level of admissible claims arising out of the *Erika* incident, the level of payments should be maintained at 80%. It was also decided that the level of payments should be reviewed at the Committee's next session (document 92FUND/EXC.14/12, paragraph 3.4.49).

## 12.2 Renewed evaluation of the likely level of claims

The Director is continuing his consideration of the likely level of claims and will provide further information on this issue in an addendum to this document in which he will also address the issue of the level of payments.

## 13 Other sources of funds

- 13.1 The French Government introduced a scheme to provide emergency payments in the fishery sector. This scheme is administered by OFIMER (Office national interprofessionnel des produits de la mer et de l'aquaculture), a government agency attached to the French Ministry of Agriculture and Fisheries. Initially OFIMER made payments to claimants of up to FFfr200 000<sup><3></sup> (£19 200) on the basis of its own assessment of the losses, without consultation with Steamship Mutual and the 1992 Fund. Subsequently OFIMER stated that it used the assessment made by Steamship Mutual and the 1992 Fund and accepted by the claimant as a basis to supplement the compensation paid by them.
- 13.2 The Director has been informed that OFIMER has paid approximately €3.8 million (£2.4 million) to claimants in the fishery sector and some €2 million (£1.2 million) to salt producers.
- 13.3 The French Government has also introduced a scheme to provide supplementary payments in the tourism sector. The scheme has been operational since 25 July 2001, and payments totalling €4.9 million (£3 million) have been made.

## 14 Court surveyors for evaluation of the damage

- 14.1 Under French law a person who has suffered damage is entitled to a court survey (expertise judiciaire) for the purpose of assessing his loss.
- 14.2 In April 2000 the Conseil Général de Vendée and a number of other regional bodies requested that the court in Sables d'Olonne should appoint experts who should make an evaluation of the damage by contamination of the affected sectors, in particular fisheries, the tourism industry, municipalities, départements and regions. They also requested that the Court should order the 1992 Fund to intervene in the proceedings. The request was made not by the individual claimants in the fishery and tourism sectors but by regional public bodies.
- 14.3 At a court hearing the 1992 Fund stated that it did not object in principle to being forced to intervene in the proceedings. However, the Fund did not agree to the proposed extended mandate for the court experts. The Fund made the point that if the Court were to give the experts the

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<3> This amount corresponds to €30 490.

proposed mandate this would impose a considerable workload on them. The Fund informed the Court that the proposed task, ie to assess the losses suffered by all victims, was exactly the task carried out by the experts engaged by Steamship Mutual and the 1992 Fund. Attention was drawn to the Fund's established policy to endeavour to reach out-of-court settlements. The Fund requested that the proposed mandate of the experts should be modified to the effect that the experts should make an evaluation of the damage only at the specific request of the individual victims in order to avoid interference with the claims handling carried out through the Claims Handling Office in Lorient. In May 2000 the Court in Sables d'Olonne decided in accordance with the Fund's request.

- 14.4 Similar requests were made by communes in Loire Atlantique and Charente Maritime to the administrative courts in Nantes and Poitiers. The Courts appointed the same experts as those already appointed by the Court in Sables d'Olonne to assess the damage suffered by the respective claimants.
- 14.5 The court experts held meetings in early December 2000 and in September 2001. The next meeting is scheduled for 16 April 2002.

## **15 Actions in France against Total Fina, the shipowner and others**

- 15.1 In April and May 2000 a number of public and private bodies brought actions in various courts in France against the following parties and requested that the Court should hold the defendants jointly and severally liable for any damage not covered by the 1992 Civil Liability Convention:

Total Fina SA  
 Total Raffinage Distribution SA  
 Total International Ltd  
 Total Transport Corporation  
 Tevere Shipping Co Ltd  
 Steamship Mutual  
 Panship Management and Services Srl  
 RINA (Registro Italiano Navale)

- 15.2 As regards these proceedings reference is made to section 15 of document 92FUND/EXC.9/7. There have been no developments in these proceedings since the Executive Committee's 9th session.
- 15.3 In June 2000 the commune of Mesquer in Loire-Atlantique brought legal proceedings against the Group Total Fina in the Tribunal de Commerce de Saint Nazaire on the ground that the product carried by the *Erika* was to be considered as waste and that Total Fina should therefore be liable for any damage caused by this product. The Director considered that, since this action fell outside the scope of the 1992 Conventions, the 1992 Fund should not intervene in the proceedings. As indicated at the Executive Committee's 8th session, the Director has nevertheless followed these proceedings.
- 15.4 In a judgement rendered on 6 December 2000, the Tribunal de Commerce de Saint Nazaire rejected the action referred to in paragraph 15.3. The Court held that in order to be considered as waste a substance or product must be intended for abandonment and that this was not the case in respect of the fuel oil N°2 carried on board the *Erika* which had been sold by Total International to an Italian company. The commune appealed against the judgement. On 13 February 2002 the Court of Appeal in Rennes confirmed the judgement.
- 15.5 In September 2000 a group of persons who had participated as volunteers in the clean-up operations (l'Association des Bénévoles de l'*Erika*) brought legal action in the Court in Sables d'Olonne against the Group Total Fina and requested that the experts appointed by that Court in May 2000 should be instructed to analyse the product removed from the wreck of the *Erika* of

which the Association had kept some samples. For the reasons set out in paragraph 15.3 above, the Director considered that the 1992 Fund should not intervene in these proceedings.

- 15.6 The Director is studying the issues involved in the various court proceedings in co-operation with the 1992 Fund's French and Italian lawyers<sup><4></sup>.

**16 Action in Italy by RINA SpA/Registro Italiano Navale**

- 16.1 In late April 2000 RINA SpA and Registro Italiano Navale<sup><5></sup> brought legal action in the Court of Syracuse (Augusta section) (Italy) against the following defendants:

Tevere Shipping Co Ltd  
Panship Navigational and Services Srl  
Steamship Mutual  
Conseil Général de la Vendée  
Total Fina SA  
Total Fina Raffinage Distribution SA  
Total International Ltd  
Total Transport Corporation  
Selmont International Inc  
The 1992 Fund  
The French State

- 16.2 RINA SpA and Registro Italiano Navale requested that the Court should declare that they were not liable, jointly or severally or alternatively, for the sinking of the *Erika* and for the pollution of the French coast, or for any other consequence of the incident whatsoever.

- 16.3 The plaintiffs also requested that, in the event that they were to be held liable and that there was a link of causation between this hypothetical liability and the consequences of the incident, the Court should declare that they would not have any obligation to pay compensation towards any of the defendants on any ground whatsoever, either directly or indirectly or by way of recourse. They also requested that the Court should declare that this hypothetical liability would be limited as provided in the applicable Rules of the plaintiffs<sup><6></sup>.

- 16.4 In the submission to the Court the plaintiffs stated that Registro Italiano Navale classed the *Erika* in August 1998 and that RINA had carried out an annual survey of the *Erika* which had commenced on 16 August 1999 in Genoa (Italy) and had been completed on 24 November 1999 in Augusta (Italy). The plaintiffs stated that since various parties had made public their intention to involve RINA for omissions during a survey on 24 November 1999, they had an interest in obtaining as soon as possible a judgement declaring them not liable for the incident and its consequences, maintaining that there was no link of causation between any conduct of the plaintiffs and the incident.

- 16.5 The plaintiffs have maintained that the Italian Courts are competent in accordance with Article 5.3 of the 1968 Brussels Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters, which provides that a person domiciled in a Contracting State may in another Contracting State be sued in matters relating to tort, delict or quasi delict, in the courts of the place where the harmful event occurred.

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<4> Maître Jean-Serge Rohart (Paris) and Professor Nicola Balestra (Genoa).

<5> According to the plaintiffs, RINA SpA replaced Registro Italiano Navale as the Italian classification society on 1 August 1999.

<6> These Rules provide: In no case shall the liability of RINA, regardless of the amount of the claimed damages, exceed the value equal to five times the total of the fees received by RINA as consideration of the services rendered from which the damage derives.

- 16.6 The plaintiffs have argued that the channelling provisions in Articles III.1 and III.4 of the 1992 Civil Liability Convention preclude any liability of classification societies. They have also maintained that it has been established by English and American leading cases that the shipowner is the only party responsible for the operation, maintenance and seaworthiness of the vessel and that no such liability can lie with the classification society which is neither the guarantor nor the underwriter of the classed vessel.
- 16.7 The first court hearing was held on 4 December 2000. Only procedural issues were dealt with at the hearing. The Court ordered the parties to submit pleadings on a specific procedural issue, ie whether the plaintiffs' action was a nullity due to the fact that the plaintiffs had not given sufficient details on the grounds of their action. In February 2001 the Court rejected the defence of nullity.
- 16.8 In March 2001 the 1992 Fund commenced legal action under a special procedure directly before the Supreme Court of Cassation requesting that the Court should decide that Article 5.3 of the Brussels Convention did not apply to the plaintiffs' action, since it related to a declaration of non-liability. Subsequently the French Government and the companies in the Total Group took corresponding actions. As a consequence of this procedure, the Tribunal of Syracuse suspended the proceedings on the merits pending the decision of the Court of Cassation. It is expected that the hearing before the Court of Cassation will take place in 2002.

**17 Actions by the 1992 Fund against RINA SpA and Registro Italiano Navale**

- 17.1 At its 8th session the Executive Committee was informed that in order to protect the 1992 Fund's position, the Director had filed legal actions against RINA SpA and Registro Italiano Navale in the Commercial Courts in Vannes, La Roche sur Yon and Lorient, requesting the Courts to join the 1992 Fund in the proceedings commenced by the Conseil Général de Morbihan and others. It was further noted that the 1992 Fund had requested that the Courts should suspend the proceedings until the results of the various investigations into the cause of the incident had been completed. It was noted that the Director had emphasised that the 1992 Fund's actions were of a protective nature and that the Fund had reserved its right to present at a later stage claims against the two defendants for reimbursement of any amounts which the Fund might have paid under the 1992 Conventions to victims of oil pollution damage and that the Fund had also reserved its right to take similar actions against any other party who might be liable in the light of the results of the investigations into the cause of the incident.
- 17.2 The Executive Committee endorsed the Director's position and the steps taken by him to protect the 1992 Fund's interests, in particular the actions taken against RINA SpA and Registro Italiano Navale (document 92FUND/EXC.8/8, paragraph 3.49).
- 17.3 There has been no development in respect of the legal actions taken by the 1992 Fund.

**18 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 give the Director such instructions in respect of the court proceedings referred to in sections 15 – 17 as it may deem appropriate; and
  - (c) to give the Director such instructions in respect of the handling of this incident and of claims arising therefrom as it may deem appropriate.
-