



## INCIDENTS INVOLVING THE 1992 FUND

### ERIKA – CLAIMS SITUATION AND LEVEL OF PAYMENTS

#### Note by the Director

**Summary:**

As at 26 June 2002, 6 206 claims totalling FFr1 038 million or €158 million (£102 million) had been received at the Claims Handling Office in Lorient. 5 599 claims corresponding to 90% of all claims had been assessed. Payments totalling FFr285 million or €43 million (£28 million) had been made in respect of 4 389 claims. Further claims have been lodged against the shipowner's limitation fund and in various court proceedings.

The Director has reconsidered the likely total amount of all admissible claims arising from this incident. In the light of the remaining uncertainty in this regard, 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.

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

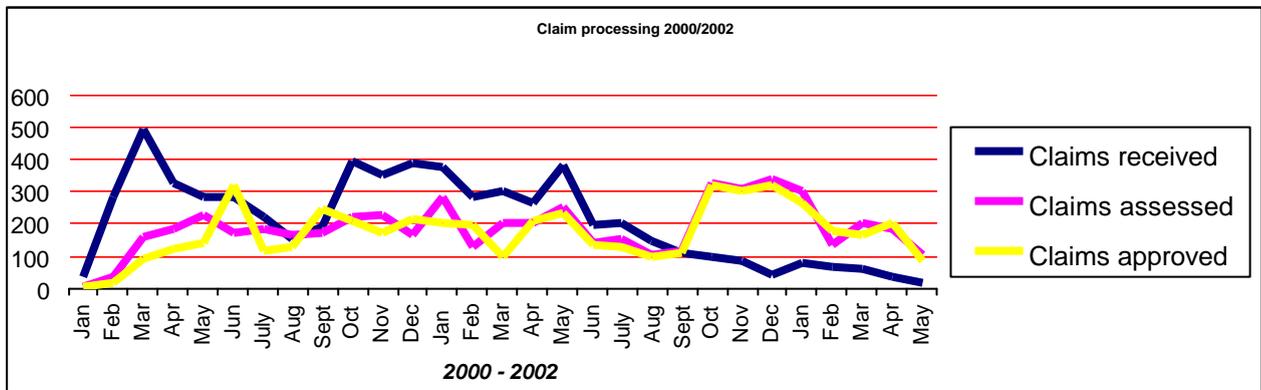
#### 1 Claims situation

- 1.1 As at 26 June 2002, 6206 claims for compensation had been submitted to the Claims Handling Office in Lorient established by the 1992 Fund and the shipowner's P & I insurer, the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual), for a total of FFr1 038 million or €158 million (£102 million)<sup><1></sup>.
- 1.2 Five thousand five hundred and ninety nine claims totalling FFr819 million or €125 million (£81 million) had been assessed at a total of FFr427 million or €65 million (£42 million). Assessments had thus been carried out of 90% of the total number of claims received.
- 1.3 Settlement agreements had been reached in respect of 4211 claims. The claimed amounts totalled FFr482 million or €73 million (£47 million), whereas the settlement amounts totalled FFr342 million or €52 million (£34 million).

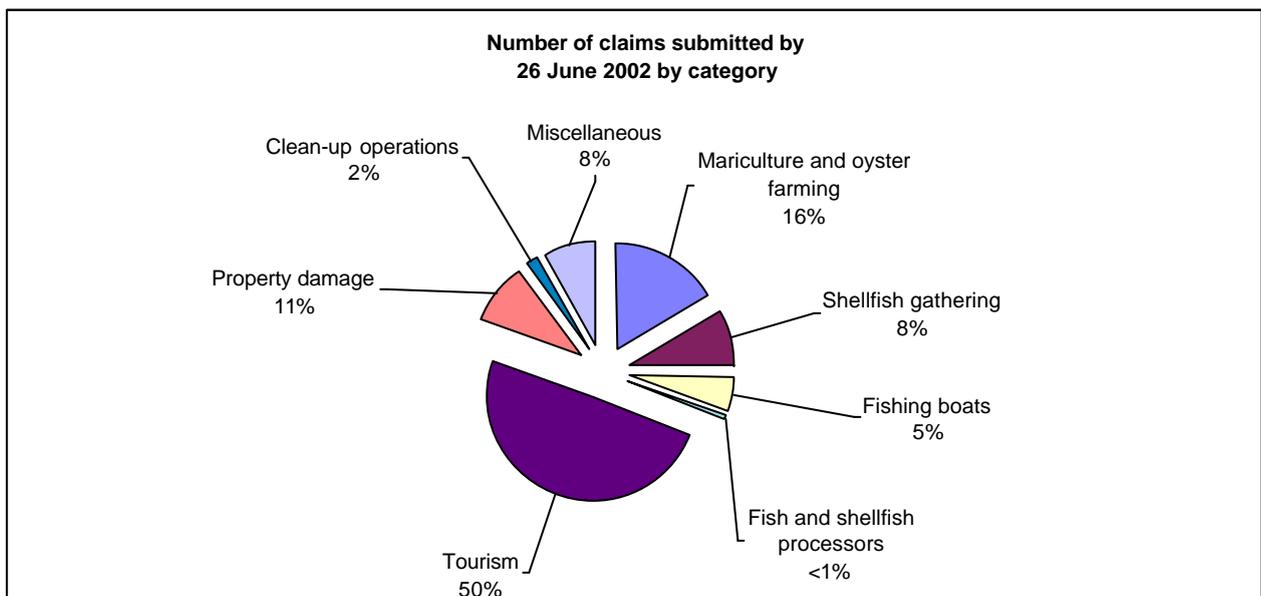
<1>

The French franc was replaced by the Euro on 1 January 2002. Since claims have generally been made in French francs and payments effected up to 31 December 2001 were made in French francs, the amounts in the document have to a large extent been given in both currencies. The rate of conversion is €1 = FFr6.55957.

- 1.4 Seven hundred and sixteen claims, totalling FFr108 million or €16 million (£11 million), had been rejected. One hundred and thirty claimants whose claims total FFr37 million or €5.6 million (£3.6 million) have contested the rejection and their claims are being reassessed in the light of additional documentation provided by the claimants.
- 1.5 Payments of compensation had been made in respect of 4 389 claims (including interim payments) for a total of FFr285 million or €43 million (£28 million), out of which Steamship Mutual had paid FFr84 million or €13 million (£8 million) and the 1992 Fund FFr201 million or €31 million (£20 million). Payments had thus been made in respect of 71% of all claims.
- 1.6 Six hundred and twenty seven claims totalling FFr219 million or €33 million (£22 million) were either in the process of being assessed or were awaiting claimants providing further information necessary for the completion of the assessment.
- 1.7 The graphs below show the total number of claims received each month against those assessed and approved since January 2000 and the number of claims submitted by category.



- 1.8 As is shown by the graph above, the number of claims assessed in recent months is lower than the number of claims assessed in the latter part of 2001. This has mainly been due to the complexity of the claims assessed in 2002 and to the need in many cases to seek additional supporting information from claimants in support of the alleged loss.



- 1.9 The following tables give details of the processing of claims presented to the Claims Handling Office in various categories.

Claims submitted by 26 June 2002									
Category	Claims submitted	Claimed amount		Claims assessed		Claims for which payments have been made		Claims rejected	
		FFr	€						
Mariculture and oyster farming	983	90 618 876	13 814 759	977	99%	777	79%	79	8%
Shellfish gathering	507	20 489 903	3 123 666	490	97%	329	65%	97	19%
Fishing boats	313	16 389 222	2 498 521	306	97%	262	84%	23	7%
Fish and shellfish processors	38	21 314 895	3 249 435	36	95%	25	66%	5	13%
Tourism	3 103	732 518 075	111 671 661	2 956	95%	2 272	73%	469	15%
Property damage	674	38 354 224	5 847 064	294	44%	240	36%	20	3%
Clean-up operations	119	55 761 232	8 500 745	92	77%	68	57%	8	7%
Miscellaneous	469	62 856 618	9 582 430	448	96%	416	89%	15	3%
<b>Total</b>	<b>6 206</b>	<b>1 038 303 045</b>	<b>158 288 281</b>	<b>5 559</b>	<b>90%</b>	<b>4 389</b>	<b>71%</b>	<b>716</b>	<b>12%</b>

Payments authorised and made by 26 June 2002						
Category	Payments authorised			Payments made		
	Number of claims	Amounts		Number of claims	Amounts	
		FFr	€		FFr	€
Mariculture and oyster farming	884	36 760 009	5 604 027	777	26 156 565	3 987 543
Shellfish gathering	379	4 048 528	617 194	329	3 233 722	492 978
Fishing boats	279	4 932 559	751 964	262	4 237 045	645 933
Fish and shellfish processors	26	3 923 397	598 118	25	3 892 705	593 439
Tourism	2 408	213 951 601	32 616 711	2 272	205 319 579	31 300 768
Property damage	266	7 775 029	1 185 296	240	3 068 590	467 804
Clean-up operations	84	21 785 623	3 321 197	68	17 529 561	2 672 364
Miscellaneous	423	27 876 830	4 249 795	416	21 828 060	3 327 666
<b>Total</b>	<b>4 749</b>	<b>321 053 576</b>	<b>48 944 302</b>	<b>4 389</b>	<b>285 265 827</b>	<b>43 488 495</b>

- 1.10 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 as at 26 June 2002. In six of the eight categories over 95% of all claims had been assessed. Payments had been made in respect of over 70% of the claims in all categories. Although in the tourism sector the majority of the claims were presented relatively late, 95% of the claims in this sector had been assessed. There is still a delay between the time of approval and the time of payment, mainly as a result of claimants not having replied to the offer for settlement or not having accepted the assessed amounts.
- 1.11 As regards the tourism sector, some 120 claims are being examined in the light of the decision adopted by the Executive Committee at its 16th session in April/May 2002 that claims by businesses located at some distance from the coast should be assessed on a case-by-case basis, normally after a visit by the 1992 Fund's expert to the claimant's business, in order to establish whether there was a link of causation between the alleged loss or damage and the contamination in accordance with the Fund's normal practice.
- 1.12 As for the category "property damage" only 294 claims (44%) had been assessed. However, 328 claims in this category (49%) submitted by salt producers in Guérande and Noirmoutier cannot be assessed for the time being until technical evidence is submitted. In addition, claims from salt producers in Guérande cannot be examined until the expert appointed by the Court in St Nazaire has completed his examination as to whether or not it would have been feasible to produce salt in 2000 in Guérande that would meet the criteria relating to quality and the protection of human health (cf document 92FUND/EXC.16/3, paragraph 3.5).
- 1.13 In the clean-up sector claims submitted by some communes cannot be assessed until the claimants have provided the additional information and documentation requested by the 1992 Fund. All the other pending claims in this category are being examined by the 1992 Fund. It is expected that

assessments of several of these claims will be finalised in the near future. The French authorities are assisting the Fund in ensuring that compensation paid to the communes under the French national contingency plan (Plan POLMAR) is taken into account in the examination of the claims so as to ensure that no duplication of payment occurs.

- 1.14 Claims totalling FFr124 million or €19 million (£12 million) have been lodged against the shipowner's limitation fund constituted by the shipowner's insurer, Steamship Mutual. Some 25 of these claims, totalling FFr46 million or €7 million (£4.5 million), have not been presented to the Claims Handling Office, the major part of this amount (FFr37 million or €5.6 million (£3.5 million)) relating to claims presented by communes and other public bodies. The remaining claims lodged against the limitation fund, totalling FFr78 million or €12 million (£8 million), have also been submitted to the Claims Handling Office, but for a lesser amount (FFr44 million or €6.7 million (£4.3 million)). However, most of the claims in this latter group have been settled, and it appears therefore that these claims should be withdrawn against the limitation fund to the extent that they relate to the same loss or damage.
- 1.15 A number of communes and other public bodies have made requests to various courts that court surveys (expertises judiciaires) should be carried out to establish the damage suffered by them (cf document 92FUND/EXC.16/3, section 14). These surveys have not been completed and it is not possible to ascertain the amounts which will be assessed by these surveys.
- 1.16 Some 50 claimants, almost all of which are public bodies, have presented claims for alleged loss or damage in various courts in the context of the court surveys mentioned in paragraph 1.15. These claims, which total FFr120 million or €18 million (£12 million), including one for FFr59 million or €9 million (£5.8 million) for damage to the environment, have neither been presented to the Claims Handling Office nor in the limitation proceedings.

## **2 Maximum amount available for compensation**

- 2.1 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.
- 2.2 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.
- 2.3 The Director's calculation gave 135 million SDR = FFr1 211 966 811<sup><2></sup> (£113 million), and the Committee endorsed this calculation at its April 2000 session.
- 2.4 At its October 2001 session the Assembly endorsed the position taken by the Executive Committee (document 92FUND/A.6/28, paragraph 21.4).

## **3 Others sources of funds**

- 3.1 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 FFr200 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.

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

<3> This amount corresponds to €30 490.

- 3.2 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.
- 3.3 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 €6 million (£3.9 million) have been made.

#### **4 Time bar**

- 4.1 Under the 1992 Civil Liability Convention, rights to compensation from the shipowner and his insurer are extinguished unless legal action is brought within three years of the date when the damage occurred (Article VIII). As regards the 1992 Fund Convention, rights to compensation from the 1992 Fund are extinguished unless the claimant either brings legal action against the Fund within this three-year period or notifies the Fund within that period of an action against the shipowner or his insurer (Article 6). Both Conventions also provide that in no case should legal actions be brought after six years from the date of the incident.
- 4.2 During September 2002 the Director intends to inform individually all those who have submitted claims and with whom settlements have not been reached by that time about the time bar issue. In respect of the *Erika* incident it may be uncertain as to from which day the three year time bar period starts to run for the individual claimant (ie the day when the respective claimant's loss occurred). In view of the uncertainty as to the starting point of the time bar period, the Director will suggest that the claimants should assume that the time bar period commences on the day of the incident (ie 12 December 1999), in order to avoid any risk of the claims becoming time-barred. He will also make it clear that even if a claimant has taken legal action, this will not prevent further discussions concerning his claim for the purpose of reaching an out-of-court settlement.

#### **5 Level of payments**

##### **5.1 The Executive Committee's previous decisions on the level of payments**

- 5.1.1 An extensive study was carried out within the French Ministry of Economy, Finance and Industry in June 2000 on the extent of the damage caused by the *Erika* incident in respect of the tourism industry. In this study the estimated total amount of the admissible claims in the tourism industry fell within the range of FFr800 – 1 500 million or €122 – €229 million (£70 – 144 million).
- 5.1.2 In the view of the uncertainty as to the total amount arising from the *Erika* incident, the Executive Committee decided, at its 8th session held in July 2000, 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).
- 5.1.3 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).
- 5.1.4 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).
- 5.1.5 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).
- 5.1.6 In the light of the June 2001 study and the opinion of the 1992 Fund's experts the Executive Committee decided at its 13th session, held in June 2001, 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 (document 92FUND/EXC.13/7, paragraph 3.2.42).

- 5.1.7 A supplementary study was carried out in October 2001 within the French Ministry of Economy, Finance and Industry ('the October 2001 study'). The October 2001 study confirmed 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 arrived at a total of FFr850 million (£81 million). The October 2001 study concluded that compensation at 100% was therefore possible with a safety margin of FFr350 million or €3 million (£33 million).
- 5.1.8 The 1992 Fund's experts broadly agreed with the overall estimate made in the October 2001 study.
- 5.1.9 At the Executive Committee's October 2001 session, it was noted that the observations made by a variety of tourism organisations had confirmed the 1992 Fund's experts' view that the *Erika* incident had not had a significant impact on the 2001 season and that there were other factors that might have impacted on 2001 performance. However the Claims Handling Office had received requests for claim forms for the 2001 tourism season and, in the experts' view, claims for losses during the 2001 season might be admissible in a limited number of cases where the claimant's business was located in an area where the shoreline had remained contaminated.
- 5.1.10 In the evaluation of the likely level of admissible tourism losses at FFr500 million (£47 million), the October 2001 study had not taken into consideration that claims might be presented by tourist organisations for exceptional spending on promotional campaigns in 2001. The Fund's experts suggested that whilst such claims might not be admissible for compensation, such claims might be forthcoming. The October 2001 study had not made any assumption as to the approach of the French courts and their interpretation of the concept of pollution damage.
- 5.1.11 In the view of the 1992 Fund's experts, these factors might have led the October 2001 study to underestimate the overall level of claims, but this under-estimate might well be offset by a significant proportion of potential claimants deciding not to present claims. It appeared that many small tourism or tourism-related businesses considered the task and process involved in submitting a claim too complicated or laborious or that it might 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 appeared not to have resulted in potential claimants changing their opinion in this regard.
- 5.1.12 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% 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 (document 92FUND/EXC.14/12, paragraph 3.4.49).
- 5.1.13 At its 16th session, held in April/May 2002, the Executive Committee decided 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% (document 92FUND/EXC.16/6, paragraph 3.2.25).
- 5.1.14 The French delegation agreed to maintain the level at 80% as no new elements had become available since the October 2001 session, but expressed the view that enough information should be available by the time of the next session of the Executive Committee in July 2002 to enable a decision to be made on raising the level of payments.

5.2 Other assessments of the total damage arising from the *Erika* incident

5.2.1 At its 11th session, held in January 2001, the Executive Committee took note of a study of the damage resulting from the *Erika* incident carried out by a French consulting firm specialising in accounting (Mazars et Guérard) assisted by various groups of experts. The study had been commissioned by l'Association Ouest Littoral Solidaire (a group of three administrative regions: Bretagne, Pays de La Loire and Poitou-Charentes). According to the study the total amount of the damage could be estimated to be in the range of FFr5 460 - 6 340 million or €32 - 966 million (£538 - 624 million).

5.2.2 In February 2002 this study was submitted to the court survey (expertise judiciaire) carried out on the instruction of the Court in Les Sables d'Olonne (document 92FUND/EXC.16/3, paragraph 14.2).

5.2.3 The study gave the following estimates of the damage:

	FFr (million)	FFr (million)
1. TotalFina		
Oil removal from the wreck	500	
Disposal of oily waste	200	
Clean-up operations	220	
Reinstatement of image of the affected area	30	
Action fund	<u>50</u>	
		1 000
2. Plan Polmar		900
3. Regional and local authorities		190
4. Tourism industry (out of which FFr610-690 million (£57-65 million) is for losses in 2001 and 2002)		2 650 - 3 220
5. Maritime sector		340 - 480
6. Reinstatement of image		150 - 200
7. Environmental damage		
Damage to fauna	50	
Reinstatement of polluted areas	40 - 110	
Various studies	<u>140 - 190</u>	
		<u>230 - 350</u>
		FFr5 460 - 6 340

5.2.4 It was stated in the report that the assessment was not intended to form the basis of an estimate of losses suffered by individual claimants. It appears, in any event, that as regards the losses in the tourism sector (item 4) the assessment was based on a reduction in turnover and not on the loss of profit, the latter being the basis of the assessment of compensation. As regards the maritime sector (item 5), the Director believes that the amount indicated was exaggerated. It also appears that the amounts referred to in item 7 would fall outside the definition of 'pollution damage' laid down in the 1992 Conventions, except in respect of reasonable reinstatement measures actually undertaken, if any. It should be noted that items 1 and 2 in the table can be disregarded for the purpose of the Executive Committee's consideration of the 1992 Fund's level of payments, since these items relate to costs incurred by Total Fina and the French State (cf paragraph 5.3.2 below).

5.3 Director's considerations

- 5.3.1 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.
- 5.3.2 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 (document 92FUND/EXC.16/3, paragraph 11). The undertaking by the French Government not to pursue claims covers also subrogated claims in respect of payments made under the schemes referred to in section 3 above.
- 5.3.3 There have been no reports of re-oiling of the coastline during the winter 2001/2002. In the Director's view it is in any event unlikely that there will be any further significant shoreline impact.
- 5.3.4 The October 2001 study carried out within the Ministry of Economy, Finance and Industry was 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.
- 5.3.5 In his submission to the Executive Committee's April/May 2002 session, the Director expressed the view that the estimate in the October 2001 study on the tourism claims of FFr500 million or €76 million (£49 million) might be on the low side and considered that a figure of FFr700 million or €107 million (£69 million) would be prudent. He also considered it advisable to include an amount of FFr100 million or €15 million (£10 million) for losses in the tourism sector during 2001 and an additional allowance for marketing campaigns of some FFr100 million or €15 million (£10 million). He estimated the total admissible claims in the sectors other than tourism at FFr275 – 325 million or €42 – 49 million (£27 – 32 million). He further believed that it would be prudent to add a general safety margin of FFr200 million or €30 million (£20 million). On these assumptions, the Director's estimate of the total admissible claims was FFr1 400 million or €213 million (£138 million).
- 5.3.6 As mentioned above, as at 26 June 2002 settlement agreements had been concluded in respect of 4 211 claims. The claimed amounts totalled FFr482 million or €73 million (£47 million), whereas the settlement amounts totalled FFr342 million or €52 million (£34 million). The settlement amounts represent on average 71% of the claimed amounts, the settlement level varying between sectors from 44% to 85%.
- 5.3.7 Although the uncertainties inherent in the estimates of admissible losses from the tourism sector (FFr500 million) set out in the October 2001 study have been reduced considerably, there still remain in the Director's view some uncertainties as to the total amount of admissible claims from that sector. Only 21% of the businesses in the affected departments that are known to have sustained a reduction in turnover on the basis of VAT declarations have submitted claims.
- 5.3.8 All claims submitted so far to the Claims Handling Office represent a total claimed amount of FFr1 038 million or €158 million (£102 million) for all sectors. In the light of the reduction by a total of FFr140 million or €21 million (£14 million) of the claimed amounts in respect of the over 4 200 claims settled so far, the claims presented represent a total exposure of some FFr900 million or €137 million (£89 million). However, claims totalling some FFr560 million or €85 million (£55 million) have not yet been settled.
- 5.3.9 In the light of the high percentage of claims assessed and the settlement levels referred to in paragraph 5.3.6, the Director has revised his estimate of the admissible claims in respect of sectors other than tourism to FFr250 – 300 million or €38 - 46 million (£25 - 30 million).

- 5.3.10 In the document submitted to the Executive Committee's April/May 2002 session, the Director stated that, although the outcome of the 2001 tourism season was not yet known in any detail, it appeared that it was relatively good. He expressed the view that it was unlikely therefore that the 2001 tourism season had been affected by the *Erika* incident to any significant degree, but that there might nevertheless be admissible claims relating to that season from areas where clean-up was still being carried out. He mentioned that a large number of the tourism claims relating to the 2000 tourism season were submitted during the period April-June 2001 and that it was possible that a significant number of claims relating to the 2001 season would be presented during late spring/early summer 2001. However, during the period April 2002 to 24 June 2002 only 70 such claims, totalling FFr37 million or €5.6 million (£3.6 million) were presented to the Claims Handling Office, out of which 25 were submitted in June. The official statistical data on the 2001 tourism season has not yet been published. However, information obtained by the 1992 Fund's experts indicates that there was a recovery in 2001 compared to 2000 but that the number of visitors during the 2001 tourism season was lower than the 1999 figures. The Director believes nevertheless that it is unlikely that there will be a significant number of further claims from the tourism sector for the 2001 season.
- 5.3.11 On the basis of the claims submitted to the Claims Handling Office and in the light of the 1992 Fund's experience of settlement levels, the Director makes the following estimates as to the total amount of the admissible claims. He estimates that the total amount of the admissible claims in the tourism sector will be in the region of FFr550 – 600 million or €84 - 91 million (£54 – 59 million). He considers that an additional allowance for marketing campaigns of FFr50 million or €8 million (£5 million) would be prudent. As mentioned in paragraph 5.3.9, the total amount of the admissible claims in sectors other than tourism is estimated at FFr250 - 300 million or €38 - 46 million (£25 - 30 million). Based on these estimates, the total of the admissible claims would be in the region of FFr950 million or €145 million (£94 million). The total amount available for compensation is FFr1 211 966 811 or €184 753 149 (£114 million). On this basis there would be a sufficient safety margin to enable the 1992 Fund to increase the level of payments to 100%.
- 5.3.12 There are, however, other factors that give rise to uncertainties. Claims which have not been presented to the Claims Handling Office have been lodged against the shipowner's limitation fund for some FFr46 million or €7 million (£4.5 million). Account should also be taken of the claims presented in various courts referred to in paragraph 1.16 where the claims total FFr120 million or €18 million (£17 million). The outcome of the court surveys referred to in paragraph 1.15 may result in further claims and it is not possible to make an estimate of the magnitude of such claims. As mentioned above, there is still considerable time before the expiry of the time bar period. In view of these uncertainties, the Director proposes that the level of payments should be maintained 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 Executive Committee's 18th session, to be held in October 2002.

## **6 Action to be taken by the Executive Committee**

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
  - (b) to decide on the level of the 1992 Fund's payments.
-