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FUND 1992

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INCIDENTS INVOLVING THE 1992 FUND

PRESTIGE

Note by the Director

Summary:

Fragments of oil remain scattered over a wide area in the Bay of Biscay, which from time to time strand on shorelines in Spain and France. The amount of oil escaping from the wreck has been estimated at less than 5 tonnes per day and is considered no longer a threat to shorelines. Clean-up operations continue along the polluted coastlines of Spain and France. Extensive fishing bans remain in place in Spain. Preliminary estimates by the experts appointed by the London Club and the 1992 Fund indicate that claims in respect of the costs of preventive measures and clean-up in Spain, France and Portugal could be in the range of €215-320 million (£158-236 million) and that losses in respect of fisheries and aquaculture could be in the range of €80-250 million (£59-183 million) depending upon when the fishing bans are lifted. It is too early to be able to predict the likely losses in the tourism sector. In view of the uncertainty regarding the losses, particularly in the fishery and tourism sectors, it is considered premature to decide on the level of payments at this stage.

Action to be taken:

Decide (a) whether to authorise the Director to settle and pay claims, (b) the level of payments, (c) the conversion of the amount of compensation available under the 1992 Conventions into Euros, and (d) whether to endorse the Director's proposal regarding the funding of compensation payments.

1 Distribution of the oil

- 1.1 Fragments of oil originating from the *Prestige* prior to it sinking were scattered over a wide area of the Bay of Biscay, oscillating between the French and Spanish coasts as a result of the variable winds.
- 1.2 Intermittent oiling of shorelines in Spain extends over some 900 km from Vigo in the south to the French border in the north. The heaviest shoreline pollution is between La Coruña and Aguiño and on the islands of Sálvar, Vionta, Ons and Cies.

- 1.3 Shoreline contamination in France has to date been much less severe than in Spain, with light to moderate deposits of tar balls extending over some 300 km from the Spanish border in the south as far as La Rochelle in the north.

2 Operations to prevent further oil escaping from the wreck

- 2.1 A French remotely operated submersible vehicle (ROV) is being used to temporarily seal and plug cracks and holes in the wreck to minimise the escape of oil. The operation appears to have been partially successful in that the amount of oil escaping has been estimated at less than 5 tonnes per day and is no longer considered a threat to shorelines. Investigations by a French laboratory have indicated that the cargo oil can continue to flow at the temperatures prevailing at the seabed (+2°C).
- 2.2 The Spanish Ministry of Science and Technology has established a Commission to investigate the long-term risk of further pollution from the wreck and to examine proposals submitted by five companies on ways of preventing any future escape of oil.

3 Impact of the spill

Spain

- 3.1 The coastline of Galicia, which is one of the richest fishing areas in Europe, has been most adversely affected by the incident. Fisheries exclusion zones were put in place shortly after the incident banning virtually all fishing along about 90% of the coastline and extending 8 miles offshore. These bans are causing widespread economic impact to some 13 000 shellfish harvesters and the owners of some 6 000 inshore fishing vessels. Some of the bans cover areas unaffected by oil from the *Prestige*. The 1992 Fund does not know what criteria the Spanish authorities are using to decide whether or not fishing zones should be closed or open.
- 3.2 Fishing bans have also been imposed in Asturia and Cantabrica, although these are on a limited scale and do not affect all species and all types of fishing. Furthermore, fishing activity in these regions is limited during the period November to April due to seasonal factors and closures related to stock management.
- 3.3 The bans do not cover aquaculture, even though this sector has been affected by pollution. There is a major turbot farming industry using onshore tanks supplied with seawater abstracted via sub-surface intakes. A number of important farms are located in heavily polluted areas, although most have taken measures to prevent oil entering the rearing tanks so that they can continue to operate. However, despite these efforts stocks were destroyed at one of the smaller farms on the order of the health authorities.
- 3.4 The major aquaculture activity in Galicia is the rearing of mussels on rafts. Although no mussel rafts appear to have been directly affected by oil, a downturn in demand has been reported. Furthermore, the current fishing bans prohibit the collection of mussel seed for sale to mussel farmers, and if the bans were to be prolonged, this could result in substantial mussel production losses in 2004.
- 3.5 Although the rearing of molluscs in intertidal areas is not subject to closures, some areas have been physically oiled and owners have reported that depuration plants are refusing to accept their products, effectively closing their markets.
- 3.6 A number of depuration plants and aquariums, which rely on a regular supply of clean seawater, have closed either as a result of actual or perceived contamination of their intakes or due to limited supplies of marine products arising from the fishing bans.
- 3.7 The coasts of Galicia, Asturia and Cantabrica provide attractive tourist destinations for those seeking outdoor activities and high quality seafood. The affected region is particularly popular

with the domestic market but does not have a high profile with overseas tourists compared with other parts of mainland Spain.

France

- 3.8 Fisheries impacts in France have to date been fairly limited. On 5 January 2003 the authorities imposed a ban on the sale of shellfish, primarily oysters, from the Arcachon Basin due to the presence of oil in the entrance to the Basin. However, on the basis of analyses of samples of seawater, fish and shellfish, which confirmed that the levels of petroleum hydrocarbons were within acceptable limits, the ban was lifted on 15 January.
- 3.9 It is anticipated that the greatest potential impact in France will be on the tourism sector, since the southern Atlantic coast is noted for the quality and length of its sand beaches backed by pine forests. Like the northern Atlantic coast, it supports second homes, self-catering and residential accommodation and campsites. The scale of the tourism industry in the affected departments is more important than in the departments affected by the *Erika* incident.

4 Clean-up operations

Spain

- 4.1 In early January 2003 the main area of accumulated patches of oil at sea had drifted into the Exclusive Economic Zone of France and the co-ordination of the large-scale at sea oil recovery operation initiated by the Spanish authorities was transferred to the Maritime Prefecture in Brest.
- 4.2 A workforce of around 4 000, of which approximately half are volunteers and the other half drawn from the armed services, are participating in the clean-up. Manual collection of oil is the main method of shoreline clean-up, although mechanical beach cleaning machines have been used on sand beaches. Because many of the affected sites are difficult to access, an extensive road-building programme has been undertaken to facilitate clean-up operations.
- 4.3 By late January 2003, some 25 000 tonnes of liquid waste and 38 000 tonnes of solid waste had been collected. Although liquid wastes will eventually be recycled, solid wastes are being stored at several sites pending a decision on the final disposal method to be employed.

France

- 4.4 As indicated above, the French authorities took over the co-ordination of the at sea recovery operations in early January. A fleet of 16 vessels, including specialist recovery vessels from France, Germany, Netherlands, Norway and Spain was still operating in the Bay of Biscay by 27 January, despite the limited quantities of oil available for recovery.
- 4.5 In addition to the offshore operations, about 20 small fishing boats were engaged to recover floating oil close inshore and to collect oil stranded on sandbanks in the entrance to the Arcachon Basin.
- 4.6 Most of the shorelines affected in France are composed of relatively hard-packed sand, which are relatively easy to clean, both manually and mechanically. In mid-January around 900 people were working to the south of the river Gironde and a further 100 people to the north of the river.

5 Claims handling

- 5.1 Since the Claims Office in La Coruña opened on 20 December 2002 there have been a large number of enquiries regarding compensation, but relatively few claims (see below).
- 5.2 Although the scale of pollution in France is on a much smaller scale than in Spain it is anticipated that there will be a significant number of claims, particularly from the tourism sector. For this

reason the London Club and the 1992 Fund are giving consideration to setting up a Claims Office in Bordeaux.

6 Claims for compensation

- 6.1 As at 27 January 2003 the Claims Office in La Coruña had received one claim totalling €942 000 (£615 000) in respect of the costs of clean-up by a municipality and five claims by fishmongers totalling €12 700 (£8 200) in respect of economic losses.
- 6.2 A total of 260 prospective claimants had visited the office and 44 had communicated their intention to submit claims in respect of economic losses.
- 6.3 The Spanish authorities have been making compensation payments of some €40 (£26) per day to all those directly affected by the fishing bans. The total number of people receiving such compensation is estimated at about 40 000. These include shellfish harvesters, inshore fishermen and associated onshore workers with a high dependence on the closed fisheries, such as fish vendors, fishing net repairers and employees of fishing co-operatives, fish markets and ice factories. These payments may eventually be included in subrogated claims by the Spanish authorities under Article 9.3 of the 1992 Fund Convention. If this were to be the case the Director is of the view that such payments should be offset against any claims filed by the individual claimants against the London Club/1992 Fund.

7 Level of payments

- 7.1 The Assembly has taken the view that - like the 1971 Fund - the 1992 Fund should exercise caution in the payment of claims, if there is a risk that the total amount of the claims arising out of a particular incident might exceed the total amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention, since under Article 4.5 of the 1992 Fund Convention all claimants have to be given equal treatment. The Assembly has expressed the view that it is necessary 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 (document 92FUND/A.ES/2/6, paragraph 3.1.14).
- 7.2 The Director has started to collect information on the likely levels of claims and his preliminary findings are set out below. It should be noted that the figures presented are intended to reflect potential overall costs and economic losses that might form the bases of claims for compensation and no attempt has been made at this stage to address the question of admissibility against the Fund's criteria.
- 7.3 Although the Spanish, Portuguese and French authorities have not to date provided any estimates of the costs of clean-up operations in their respective countries, ITOPF has made a preliminary estimate of the costs in Spain and Portugal on the basis of their own on-site surveys and those of the Spanish experts engaged by the London Club and the 1992 Fund. Estimates have been made of the costs of manpower and equipment, specialised and non-specialised offshore oil recovery vessels, and aircraft used for aerial surveillance. ITOPF has included the costs of Spanish resources and of those provided by other European States, including Portugal, which responded to pollution threats to its own coastline. The estimated costs of constructing roads to inaccessible shorelines, the construction of temporary oil storage pits and the disposal of solid and liquid wastes have also been included. ITOPF has estimated that the total response costs in Spain and Portugal between 14 November 2002 and 17 January 2003 were around €18 million (£79 million), which equates to around €1.6 million (£1.1 million) per day. The ongoing daily response costs in Spain and Portugal are likely to have decreased considerably after 17 January when the responsibility for at sea clean-up operations was taken over by the French authorities. However, shoreline clean-up operations are expected to continue in Spain until at least the end of April 2003. The final clean-up response costs in Spain and Portugal could therefore be in the region of €150-200 million (£110-147 million).

- 7.4 ITOPF has applied the same principles in order to estimate the response costs in France. The response in France was commenced in mid December 2002 and by 17 January 2003 the total costs have been estimated at €1 million (£8 million). A substantial element of the costs relates to the at sea recovery operations, which were taken over by the French authorities. However, it is considered unlikely that these operations will continue much beyond the end of January 2003 as the quantity of oil sea decreases. The final clean-up costs in France could be in the region of €15-20 million (£11-15 million).
- 7.5 No decision has yet been made by the Spanish authorities as to whether anything should be done to prevent further pollution from the wreck, beyond the operation to seal as many leaks as possible. It has been estimated that the cost of removing the remaining oil from the wreck could be in the range of €50-100 million (£37-74 million), although in view of the distance of the wreck from shore and the depth of water in which it is located, the actual costs could be considerably greater than this.
- 7.6 Spanish and British fisheries experts appointed by the 1992 Fund and the London Club have estimated potential losses in the fisheries sector in Galicia on the basis of statistical records of landings by species, volumes and values in Galicia in 2001 and during the period mid-November 2001 to mid-February 2002. Losses in northern Spain have been estimated using data on landings for the region in 1996 and making adjustments using data for Galicia to take into account price and volumes changes. Aquaculture production records of volumes and values for Galicia in 2000 were updated to estimate losses in the aquaculture sectors. In all cases the data has been adjusted to reflect lost profit.
- 7.7 As indicated in paragraph 3.1, the basis of the fishery bans in Spain is not known and it is therefore impossible to estimate their likely duration. The experts have estimated losses on a monthly basis and have assumed that all bans are lifted at the beginning of April 2003, except for the most heavily polluted zone, where the ban is assumed to remain in place until 1 January 2004. The experts have pointed out that there are many possible scenarios for the lifting of exclusion zones by areas and species and that some bans may be lifted sooner and others may remain in place longer.
- 7.8 Although there has been no direct impact on the mussel industry, the experts have allowed for some losses through delayed harvesting and other factors in their assessment as well as a reduction in production in 2004 as a result of a possible shortage in seed supply (see paragraph 3.4 above). Estimates have also been made for potential losses in respect of the rearing of other molluscs on rafts and in intertidal areas. As regards onshore fish farms, most of which have continued to operate since the incident occurred, the experts have estimated costs associated with preventive measures, such as clean-up, the installation of barrier and filtration systems, and additional water quality analyses and taint testing.
- 7.9 The experts have estimated that if the majority of the fisheries bans in Spain were to be lifted by the end of March 2003 and the mussel industry was able to obtain sufficient seed, the losses should be no more than around €80-100 million (£59-73 million). However, if all the bans were to remain in place until the end of 2003, the losses could be in the region of €200-250 million (£146-183 million).
- 7.10 In view of the limited scale of pollution in France and the short duration of the fisheries bans, the losses in the fisheries and aquaculture sectors are likely to be relatively small.
- 7.11 The French and British tourism experts engaged by the 1992 Fund and the London Club have pointed out that it is too early to be able to generate any meaningful figures in respect of potential losses in the tourism sectors in Spain and France.
- 7.12 In the case of Spain, direct revenue from all overnight tourism in the affected area in 2001 was estimated to be in the range of €500 – 750 million (£365 – 550 million). However, the experts have indicated that the impact on tourism may be a low percentage of the total, bearing in mind

the dependence on the domestic market, which reportedly has a low level of advance bookings, and the high seasonality confining most activity to July and August.

- 7.13 As regards France, the tourism industry in the affected departments is estimated to generate annual spending of over €3 000 million (£1 200 million) compared with €2 000 million (£780 million) in the area affected by the *Erika* incident. The actual losses sustained will depend on the level, extent and duration of any further pollution, but given the scale of the industry in the area, a small percentage downturn in tourism would generate significant economic loss.
- 7.14 In the light of the information contained in paragraphs 7.3 – 7.13 the Director is of the opinion that it is not possible at this stage to make any meaningful assessment of the magnitude of the overall losses. In view of this uncertainty the Director proposes that his authority to make payments should for the time being remain limited to provisional payments under Internal Regulation 7.9.
- 7.15 It is expected that the claims situation will become clearer by the end of April 2003, prior to the next session of the 1992 Fund Executive Committee.

8 Actions 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 handling of this incident and of claims arising therefrom as it may deem appropriate;
 - (c) to decide whether to authorise the Director to make final settlement of claims;
 - (d) to decide whether to authorise the Director to make payments of claims and to determine the level of such payments;
 - (e) to determine the date to be used for the conversion of 135 million SDR into Euros; and
 - (f) to consider the Director's proposal as regards the funding of compensation payments.
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