



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1992

EXECUTIVE COMMITTEE
6th session
Agenda item 3

92FUND/EXC.6/2
13 January 2000
Original: ENGLISH

ERIKA INCIDENT

Note by the Director

Summary:	The <i>Erika</i> broke in two off the coast of Brittany (France). Some 14 000 tonnes of heavy fuel oil were spilled. It is estimated that the bow section still contains about 6 000 tonnes of cargo and the stern section some 10 000 tonnes of cargo. Surveys of the sunken parts of the ship are being carried out. The French authorities have carried out oil recovery at sea. Clean-up operations continue along some 400 kilometres of polluted coastline. The shipowner's P & I insurer and the 1992 Fund have established a claims handling office in Lorient.
Action to be taken:	Decide (a) whether to authorise the Director to settle and pay claims, (b) the level of the 1992 Fund's payments, (c) whether steps should be taken to ensure that sufficient funds are available to enable the 1992 Fund to pay claims promptly, and (d) the conversion of the maximum amount of compensation available under the 1992 Conventions into French Francs.

1 The incident

- 1.1 On 12 December 1999 the Maltese tanker *Erika* (19 666 GT) broke in two in the Bay of Biscay, some 60 nautical miles off the coast of Brittany, France (see attached map). All members of the crew were rescued by the French marine rescue services.
- 1.2 The tanker was carrying a cargo of 30 000 tonnes of heavy fuel oil of which some 14 000 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 from a tug 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 It is estimated that about 10 000 tonnes of cargo remain in the bow section and a further 6 000 tonnes in the stern section. Although no further significant quantities of cargo have been spilled since the sinking, small quantities of cargo continue to escape from both halves of the wreck.
- 1.4 The *Erika* was entered in the Steamship Mutual Underwriting Association (Bermuda) Ltd (Steamship Mutual).
- 1.5 The Director held discussions in Paris with the French Minister of the Environment on 29 December 1999. At the French Government's invitation, he visited the affected area on 30 December 1999.

2 Clean-up operations

- 2.1 The French Naval Command in Brest, Brittany, took charge of the response operations at sea in accordance with the National Contingency Plan, 'Plan Polmar'. The French Navy mobilised a number of vessels for offshore oil recovery. The Governments of Germany, the Netherlands, Spain and the United Kingdom also provided oil recovery vessels to assist in the response. The Steamship Mutual chartered an asphalt carrier to receive recovered oil. Although the oil recovery operations were hampered by the severe weather conditions and the very high viscosity of the oil, it was reported that some 1 100 tonnes of oil were collected at sea.
- 2.2 On 25 December 1999 heavy oiling of shorelines occurred in the region of St Nazaire, La Baule, Le Croisic and La Turballe. Widespread but intermittent oiling subsequently occurred over some 400 kilometres of shoreline between South Finistère and Charente-Maritime. The Préfets of the five affected Départements took charge of shoreline clean-up with assistance from the coastal local authorities, the Civil Defence Corps, local fire brigades and the army. A total of some 5 000 people were engaged in shoreline clean-up. Operational centres were established at Quimper (South Finistère), Vannes (Morbihan), Nantes, St Nazaire and La Baule (Loire Atlantique), La-Roche-sur-Yon and les Sables d'Olonne (Vendée), and La Rochelle (Charente-Maritime).
- 2.3 The clean-up, which involves mainly manual/mechanical collection of the oil, is likely to continue for some time. Over 40 000 tonnes of oily waste which has so far been generated by the shoreline clean-up operations has been stored at various locations.
- 2.4 The 1992 Fund has monitored the clean-up operations through experts from the International Tanker Owners Pollution Federation Ltd (ITOPF), who arrived on site on 12 December 1999, assisted by a number of local surveyors.
- 2.5 The administrative courts in Nantes and Poitiers have 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 1992 Fund is following these investigations through its technical experts.

3 Impact of the spill

- 3.1 About 36 000 oiled birds (mainly guillemots) have been collected so far, some 24 000 of which were dead. Attempts have been made to clean the remaining 12 000 collected birds, half at various centres in France and the rest in Belgium, the Netherlands and the United Kingdom.
- 3.2 Oil entered a number of coastal marinas contaminating many pleasure boats and moorings.
- 3.3 Oil also entered the Baie de Bourgneuf that supports an important oyster and mussel fishery. Large quantities of shellfish were harvested for the Christmas market before the oil reached the coast. Some shellfish have been externally contaminated with spots of oil, and the authorities have imposed a ban on the harvesting and sale of products from the Baie de Bourgneuf.

3.4 The affected coastline supports an important tourist industry during the summer months.

4 The wreck

4.1 As mentioned above, the two sunken parts of the *Erika* contain significant quantities of oil. The French navy has carried out an underwater survey of these parts using a remote operated vehicle (ROV). The results of this survey are being analysed. A further more detailed survey will be undertaken.

4.2 The 1992 Fund has followed the survey through its technical experts.

4.3 Once the results of the survey have been examined, the French authorities will study what options are available to prevent further escape of oil from the wreck, *inter alia* by pumping out the remaining cargo.

4.4 The Director has offered to make available to the French authorities the IOPC Funds' experts involved in the oil removal operations in the *Yuil N°1* and *Osung N°3* cases.

5 Claims Handling Office

In anticipation of a large number of claims, the Steamship Mutual and the 1992 Fund have established a Claims Handling Office in Lorient. The office opened on 12 January 2000.

6 Claims for compensation

6.1 The clean-up operations at sea and onshore will result in claims for significant amounts from the French Government as well as from the préfectures and the local authorities concerned. The disposal of the collected oily waste will also give rise to large claims. Any operations to remove the oil from the wreck will result in substantial costs.

6.2 It is expected that there will be claims from the fishery sector. Claims for damage to yachts, other vessels and moorings are expected.

6.3 Although it is likely that the clean-up on shore will be completed well before the start of the 2000 tourist season, there may be claims from the tourism industry, for example for the costs of publicity campaigns to mitigate losses.

6.4 The French oil company Total Fina SA^{<1>} has undertaken to fund the survey of the two halves of the wreck and any subsequent operations to remove the oil from the wreck. Total Fina has stated that it will not pursue a claim against the 1992 Fund or against the limitation fund constituted by the owner of the *Erika* or the Steamship Mutual under the 1992 Civil Liability Convention to recover these costs, if and to the extent that such a claim would result in the total amount of the established claims arising out of the incident exceeding 135 million Special Drawing Rights (SDR).

6.5 It is impossible to make any estimate of the total amount of claims at this stage.

6.6 Further information concerning the potential claims will be given in an addendum to this document.

6.7 The Executive Committee may wish to consider whether, and, if so, to what extent, it is prepared to authorise the Director to make final settlements of claims arising out of this incident on behalf of the 1992 Fund. In several recent cases, the Director has been given such authority, to the extent that the claims do not give rise to questions of principle which have not previously been decided by the Committee.

<1> A company in the Total Fina group is the owner of the cargo on board the *Erika*.

- 6.8 The Committee may also wish to consider whether and, if so, to what extent the Director should be authorised to make payments.
- 6.9 In this context, the Executive Committee may wish to consider whether the 1992 Fund should pay established claims in full or whether it is necessary to limit the payments at this stage to a certain percentage of the established claims.
- 6.10 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).
- 6.11 The Executive Committee will be invited to consider whether steps should be taken to ensure that the 1992 Fund has sufficient funds available to make prompt payment of claims, eg by convening an extraordinary session of the Assembly in order to make a supplementary levy of contributions to an *Erika* Major Claims Fund. The Director will provide information on this point in an addendum to this document.

7 Applicability of the Conventions

- 7.1 The *Erika* was registered in Malta which at the time of the incident was a Party to the 1969 Civil Liability Convention and the 1971 Fund Convention but not to the 1992 Conventions.
- 7.2 France became Party to the 1992 Civil Liability Convention and the 1992 Fund Convention on 30 May 1996, and denounced the 1969 Civil Liability Convention and the 1971 Fund Convention with effect from that date.
- 7.3 Since at the time of the incident there was no treaty relationship between France and Malta, only the 1992 Conventions are applicable to the *Erika* incident.
- 7.4 The limitation amount applicable to the *Erika* under the 1992 Civil Liability Convention is approximately 9.2 million SDR (£7.6 million).

8 Maximum amount payable under the 1992 Fund Convention

- 8.1 Under Article 4.4(e) of the 1992 Fund Convention, the maximum amount of compensation payable in respect of the *Erika* incident under the 1992 Conventions (135 million SDR) should be converted into the national currency in question, ie French Francs, on the basis of the value of that currency by reference to the SDR on the date of the decision of the Assembly as to the first date of payment of compensation.
- 8.2 If the Executive Committee were to authorise the Director to make payments on behalf of the 1992 Fund, it will not be able to take any decision as to the date of the first payment.
- 8.3 At its 2nd session the Assembly decided, in the context of the *Nakhodka* incident, that the conversion of 135 million SDR into national currency should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the Assembly's (or the Executive Committee's) adoption of the Record of Decisions of the session at which the Assembly (or the Executive Committee) took the decision which made payments of claims possible. It was further decided that if the Record of Decisions was not adopted during the session, the date for conversion should be that of the last day of the session (document 92FUND/A.2/29, paragraph 17.2.8).

8.4 In view of the Assembly's decision in the *Nakhodka* case, the Director proposes that the conversion of 135 million SDR into French Francs should be made on the basis of the value of that currency vis-à-vis the SDR on the date of the adoption of the Executive Committee's Record of Decisions of its 6th session, ie 15 February 2000^{<2>}.

9 Investigation into the cause of the incident

9.1 A criminal investigation into the cause of the incident is being carried out at the Tribunal de Grande Instance in Paris.

9.2 At the request of a number of parties, the Tribunal de Commerce in Dunkerque has appointed experts to investigate the cause of the incident ("expertise judiciaire"). The Tribunal de Grande Instance in Sables d'Olonne has also appointed experts to investigate the cause of the incident and to assess the extent of the damage caused. Attempts have been made to get all parties to agree that only one investigation should be made into the cause of the incident, ie that in Dunkerque, but the party having made the request to the Court in Sables d'Olonne has not accepted this solution.

9.3 The 1992 Fund is following the investigations through its French lawyers and technical experts.

10 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 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 settlements 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 consider whether steps should be taken to ensure that sufficient funds are available to enable the 1992 Fund to pay claims promptly; and
- (f) to determine the date to be used for the conversion of 135 million SDR into French Francs.

* * *

<2> On 11 January 2000 1 SDR = £0.0834240. Using the exchange rate on that day (£1=FFr10.49), 135 million SDR would be equivalent to approximately FFr1 181 million (£113 million).

