



International Oil Pollution  
Compensation Funds

<b>Agenda Item 3</b>	IOPC/MAR20/3/8	
<b>Date</b>	19 February 2020	
<b>Original</b>	English	
<b>1992 Fund Assembly</b>	92AES24	
<b>1992 Fund Executive Committee</b>	92EC74	●
<b>Supplementary Fund Assembly</b>	SAES8	

## INCIDENTS INVOLVING THE IOPC FUNDS — 1992 FUND

### AGIA ZONI II

#### Note by the Secretariat

**Objective of document:**

To update the 1992 Fund Executive Committee on the latest developments regarding this incident

**Summary:**

The product tanker *Agia Zoni II*, (1 597 GT, built 1972) laden with approximately 2 194 metric tons (mt) of heavy fuel oil, and 370 mt of marine gas oil (MGO)<sup><1></sup>, sank at anchor, in good weather conditions at 0200 hours, on 10 September 2017, close to Salamina island and the northern part of the designated Piraeus anchorage area in the Saronic Gulf, Greece. The vessel settled at a depth of approximately 35 metres with about 15 metres clearance above the hull. There were no casualties.

It is believed that approximately 500 tonnes of oil were released upon sinking or shortly thereafter, contaminating approximately 20–25 kilometres of the mainland in the vicinity of Athens and Piraeus and 3–4 kilometres of Salamina island. Clean-up operations were commenced very shortly after the incident, concluding at the end of 2017.

The results of the two investigations, that have concluded to date, into the cause of the incident have reached different conclusions: one determining that the *Agia Zoni II* sank after an explosion, and the other that it sank after the sea water ballast valves were opened. That second investigation places blame on, *inter alia*, the shipowner and representatives of the salvor/one of the clean-up contracting companies (the ‘suspect party’). The conclusions of a number of other investigations, including one into the granting of the clean-up contracts to the clean-up contractors, are still awaited.

In November 2017, the wreck of the *Agia Zoni II* was lifted and towed to the salvor’s shipyard at Salamina island and was arrested by the Public Prosecutor pending his investigation into the cause of the incident. Subsequently, the wreck was cleaned by two clean-up contractors in preparation for the investigation by the Public Prosecutor.

The wreck was drydocked in June 2018 and samples of the hull plating were taken. The wreck was then refloated and is currently at the salvor’s shipyard, where it remains the subject of a dispute between the salvors and shipowner regarding its condition at redelivery.

<1> The vessel also carried approximately 15 mt of bunkers of MGO, 300 litres of lubricants and 200–300 litres of chemicals.

*Limitation Fund claims evaluation procedure*

The Limitation Fund administrator has concluded the claims evaluation procedure of the claims filed at the Limitation Court (totalling EUR 94.4 million) by publishing his provisional assessments with an assessed figure totalling EUR 45.45 million, based predominantly on a review of the rates charged by claimants. Every claimant against the Limitation Fund had the right to accept or appeal the provisional assessment by the end of September 2019; eight claimants appealed the assessment.

**Recent developments:***Claims assessment*

The assessment of the 376 claims filed against the 1992 Fund has continued, with 313 claims approved and compensation payments totalling EUR 11.47 million paid. The 1992 Fund subrogated the claims it had paid against the Limitation Fund before the deadline (5 May 2018) for filing claims expired.

*Limitation court proceedings*

A court hearing took place in January 2020 to deal with the appeals lodged against the Limitation Fund administrator's assessments. A further hearing is proposed on 25 February 2020.

*Legal proceedings*

In July 2019, the 1992 Fund was served with legal proceedings filed at the Piraeus Court of First Instance, by two of the clean-up contractors for the balance of their unpaid claims amounting to EUR 30.26 million and EUR 24.74 million respectively, after deducting the advance payments made so far. In December 2019, the third clean-up contractor also served the 1992 Fund with legal proceedings for its claim of EUR 8.9 million.

At a court hearing in November 2019, the 1992 Fund's lawyers argued and the Court expressed concerns, over these claims progressing in parallel with the submission of appeals against the Limitation Fund administrator's assessments, which could result in conflicting judgments. The Court is expected to deliver a judgment shortly.

In September 2019, the 1992 Fund was served with legal proceedings by representatives of 78 fishermen, 39 of whom have already filed claims with the 1992 Fund's Claims Submissions Office. A court hearing date is awaited.

This document examines the impact of the investigative reports on the compensation to particular claimants and recommends the Executive Committee to instruct the Director to pay compensation to persons who carried out preventive measures.

**Action to be taken:** 1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to decide whether to instruct the Director to make payment of compensation to the persons who carried out preventive measures for the expenses incurred.

**1 Summary of incident**

Ship	<i>Agia Zoni II</i>
Date of incident	10.09.2017
Place of incident	Saronic Gulf, Greece
Cause of incident	Sinking — circumstances under investigation
Quantity of oil spilled	Unknown but estimated to be approximately 500 tonnes <sup>&lt;2&gt;</sup>
Area affected	3–4 km of the coastline of Salamina island and 20–25 km of the coastline south of Piraeus Port and Athens, Saronic Gulf, Greece
Flag State of ship	Greece
Gross tonnage	1 597 GT
P&I insurer	Lodestar Marine Limited <sup>&lt;3&gt;</sup>
CLC limit	SDR 4.51 million (EUR 5.59 million) <sup>&lt;4&gt;</sup>
STOPIA/TOPIA applicable	Not applicable
CLC + Fund limit	SDR 203 million (EUR 251.48 million) <sup>&lt;5&gt;</sup>
Legal proceedings	Limitation proceedings were commenced by the insurer. The Limitation Fund administrator has published the provisional assessment of claims filed at the Limitation Fund. Eight claimants have appealed his assessment.  The 1992 Fund has been served with legal proceedings by the three main clean-up contractors and 78 fisherfolk.

**2 Background information**

Background information is provided in detail in the online *Agia Zoni II* incident report.

**3 Applicability of the Conventions**

- 3.1 Greece is Party to the 1992 Civil Liability Convention (CLC) and the 1992 Fund Convention.
- 3.2 Since the *Agia Zoni II* (1 597 GT) is below 5 000 units of tonnage, the limitation amount applicable under the 1992 CLC is SDR 4.51 million (EUR 5.59 million). The vessel was insured with Lodestar Marine Limited, a fixed premium insurance provider based in the United Kingdom.
- 3.3 The total amount available for compensation under the 1992 Civil Liability and Fund Conventions is SDR 203 million (EUR 251.48 million). Since the total amount of damages caused by the spill is likely to exceed the limitation amount applicable under the 1992 CLC, the 1992 Fund will be liable to pay compensation to the victims of the spill.
- 3.4 Greece is also a Party to the Supplementary Fund Protocol. The total amount available under the Supplementary Fund Protocol is SDR 750 million, including the amounts payable under the 1992 Civil Liability and Fund Conventions. It is, however, very unlikely that the damages caused by the spill will exceed the amount available under the 1992 Fund Convention and thus, this incident is not expected to involve the Supplementary Fund.

<sup><2></sup> Some 2 200 mt of fuel oil and oily water mixture were pumped from the wreck of the *Agia Zoni II*.

<sup><3></sup> Lodestar Marine Limited recently sold its fixed premium insurance business to Thomas Miller Speciality, a market leading global insurance provider.

<sup><4></sup> Based on the Limitation Fund figure established at the Piraeus Court of First Instance in October 2017.

<sup><5></sup> Based on the exchange rate as at 15 January 2020 of SDR 1 = EUR 1.2388.

*Insurance details*

- 3.5 The *Agia Zoni II* was insured for oil pollution risks and wreck removal with Lodestar Marine Limited, a fixed premium insurer, which was not part of the International Group of P&I Associations (International Group). The ship did not have any hull insurance. The insurance policy between the shipowner and the insurer contains a limit of liability of EUR 5 million. Nevertheless, the insurer indicated that it would honour the blue card it issued, which has a limit of SDR 4.51 million (EUR 5.59 million). The insurer has since established a Limitation Fund for EUR 5.59 million by lodging a bank guarantee with the Court.
- 3.6 The policy of insurance, with an overall limit of EUR 5 million, is insufficient since it covers all legal liabilities, not only oil pollution liabilities. There is, therefore, an under-insurance situation which will have to be addressed.

*Greek law – wreck removal*

- 3.7 Under Greek law<sup><6></sup>, any ship sailing to or from a Greek port or terminal must be insured for the obligations of wreck removal towards the Greek State, up to the limits of liability specified within the Convention on Limitation of Liability for Maritime Claims (LLMC 76/96), which amounts to SDR 1 million (EUR 1.24 million). However, based on the information provided, it does not appear that the shipowner obtained the wreck removal liability insurance, as he indicated he would.
- 3.8 Pursuant to Greek law, the Greek State has a right of direct action against the insurer for wreck removal.
- 3.9 In addition, Greek Law lists the criteria required to be considered by the shipowner for wreck removal as follows:
- (1) imposition of ‘danger for sea navigation in an area of port, canal or waterway’; or
  - (2) obstruction of mooring, anchoring, berthing, use of quays and their function; or
  - (3) contamination or threat of contamination to the environment.
- 3.10 It is understood that these criteria were considered by the Greek authorities when they made their order which requested the shipowner to remove the wreck (see paragraph 4.11 for further details).

**4 Claims for compensation**

- 4.1 The 1992 Fund has received 375 claims amounting to EUR 95.74 million and 1 claim for property damage of USD 175 000. The 1992 Fund has approved 313 claims (including the USD claim) and paid some EUR 11.47 million in compensation. Further offers of compensation have been made to a number of claimants, whose responses are awaited. In order to expedite compensation payments, the 1992 Fund and its experts are continuing to visit claimants, to investigate the issues affecting the local markets, their suppliers and the economy of the region, and are continuing to assess the claims submitted and to gather further information regarding the incident from a wide range of sources.
- 4.2 Significant work has been undertaken to review local and governmental resources, to meet with relevant government departments and to review statistical evidence in order to calculate losses for the claimants, especially the fisherfolk, affected by the incident. In addition, numerous meetings were held with environmental experts in order to agree the steps to be undertaken and the criteria to be used for the post-spill monitoring studies, and to liaise with the Limitation Fund administrator regarding the claims submitted jointly to the Limitation Fund and the 1992 Fund.

---

<6> Article 7 of Greek Law no. 2881/2001 on wreck removal.

4.3 Further details of the claims received, and payments made by the 1992 Fund are provided in the table below:

#### Claims submitted to the 1992 Fund

Claims submitted to the 1992 Fund as at 11 February 2020						
Claim Category	Claimed		Approved		Paid by Fund	
	No.	Amount (EUR)	No.	Amount (EUR)	No.	Amount (EUR)
Clean-up	29	83.20 million	12	10.99 million	12	10.80 million*
Environmental Monitoring	5	100 303	5	95 963	4	95 963
Fisheries	165	6.27 million	152	38 572	38	37 426
Property	117	904 414	99	126 309	66	115 672
Tourism	57**	5.17 million	42	417 643	25	417 385
Other	2	94 000	2	0.00	0	0.00
Property damage (USD)	1	175 000	1	0.00	0	0.00
<b>Total</b>	<b>376</b>	<b>95.74 million + USD 175 000</b>	<b>313</b>	<b>11.67 million</b>	<b>145</b>	<b>11.47 million</b>

\* Several advance payments and further offers of advance payments have been made pending full assessments of the claims

\*\* Further substantial claims are awaited from a large tourist resort

4.4 The 1992 Fund's Claims Submission Office has received enquiries from over 140 other potential claimants in the fisheries and tourism sectors, although it remains to be seen whether these will materialise into valid claims against the 1992 Fund.

4.5 The 1992 Fund has already made advance payments to several of the clean-up contractors which incurred significant expenditure responding to the incident, and full compensation payments to various other claimants who suffered damages to property or the fisheries and tourism sectors. Many claimants have claimed 'moral damages' which are not admissible under the 1992 Civil Liability and Fund Conventions.

*The claims submitted by the clean-up contractors including wreck removal expenses*

- 4.6 Twenty-nine claims amounting to EUR 83.20 million have been submitted to the Limitation Fund and to the 1992 Fund by clean-up contractors relating to (1) oil removal from the wreck; (2) shoreline clean-up; (3) preparation for, and actual, wreck removal; (4) subsequent cleaning of the wreck in order for the Public Prosecutor's investigation to be conducted; and (5) caretaking of the wreck following cleaning. Together the claims cover the period from 10 September 2017, when the *Agia Zoni II* sank, to 30 June 2018.

*Oil removal from wreck*

- 4.7 Throughout September 2017, the salvor conducted pumping operations to remove oil from the wreck. The quantity of fuel oil/water mixture eventually pumped out of the *Agia Zoni II* during the pumping and flushing operations is estimated at approximately 2 220 mt.

*Shoreline clean-up*

- 4.8 Approximately 4 kilometres of the coastline of Salamina island, and 20–25 kilometres of the heavily-populated coastline south of Piraeus Port and Athens were contaminated, including the oiling of some 300 small pleasure crafts berthed in various marinas along the respective coasts. The oil removal operations were completed in January 2018.
- 4.9 The 1992 Fund's experts have assessed the majority of the shoreline clean-up claims but their efforts have been hampered by the fact that the contractors have, in general, submitted lump-sum claims without specifying precisely when and where the personnel and equipment were used in the clean-up operations. Given that at times over 400 personnel were utilised during the clean-up operations, the task of ascertaining what was a reasonable response is very complicated.
- 4.10 The claims assessment process has been further complicated by the fact that the clean-up contractors often performed clean-up operations at the same locations, and the areas of work at each location were often not clearly delineated between the various contractors, which raises the possibility of duplicate claims for the same operations being submitted. This makes the task of the 1992 Fund's experts far more time-consuming when attempting to ascertain what a reasonable response to the incident should have been. Notwithstanding these difficulties, the 1992 Fund's experts have completed the assessments of the three main contractors involved with the shoreline clean-up claims.

*Preparation for and actual wreck removal*

- 4.11 On 29 September 2017, the Piraeus Port Authority ordered the shipowner to remove the wreck within 30 days (i.e. by 29 October 2017). On 13 October 2017, the salvors declared all cargo and diesel tanks on the wreck to be free of oil pockets. On the same day, a new order was issued by the Piraeus Port Authority to the salvors to proceed with the wreck removal 'at no cost to the Greek State'.
- 4.12 The order issued by the Authority made reference to existing Greek legislation<sup><7></sup>, stating that the presence of a shipwreck in the sea constituted a burdening factor for the maritime environment that deteriorated its features and constituted a contingent source of pollution, since, even if the bunkers and lubricants had been pumped out, remains of these substances were gradually released over time and due to weather conditions. The order also stated that 'the existence of a shipwreck constituted a hazardous feature for the users of the wider sea area', and stated that 'the salvors' plans for cleaning the wreck had noted 'that the remaining amount of oil in the cargo tanks was hard to be measured at this time...'

---

<7> The introductory report for law 2881/2001 and the minutes of the permanent commission for production and trade of the Greek Parliament.

4.13 The wreck was lifted by 29 November 2017, however, at the time of lifting the wreck, further oil escaped from the wreck site<sup><8></sup> and subsequently re-oiled parts of the mainland surrounding Piraeus, necessitating further clean-up operations. It is understood that due to difficulties of access, the salvor had not hot-tapped all the bunker tanks and thus, it could reasonably be assumed that the full quantity of bunkers and lubricants remained inside the wreck.

4.14 On 30 November 2017, the refloated wreck was towed to the salvor's shipyard on Salamina island and was berthed, awaiting inspection by the Public Prosecutor. For precaution, a floating boom was placed around the vessel.

*Cleaning of wreck for the purpose of the Public Prosecutor's investigations*

4.15 Under the instructions of the authorities, the wreck was lifted and taken to the salvor's shipyard in order to carry out an investigation by the Public Prosecutor into the cause of the sinking.

4.16 Claims have been submitted against the 1992 Fund by the clean-up contractors and salvor for cleaning the wreck under the instruction of the Public Prosecutor.

*Caretaking of the wreck following cleaning*

4.17 The wreck remains at the salvor's shipyard and has become the subject of a dispute between the shipowner and the salvor. The shipowner claimed that the wreck is not in the redelivery condition agreed by the salvor prior to lifting the wreck. The salvor disputed this and stated that its contractual obligations to the shipowner ended as of 30 November 2017, when the wreck was transported to a safe harbour after refloating.

4.18 The salvor submitted a claim against the 1992 Fund for the time period from 1 March 2018 to 31 December 2018, covering, *inter alia*, the cleaning of the wreck (which took place in March and April 2018), and the subsequent time period 'caretaking' and monitoring the cleaned vessel at the salvor's shipyard until the end of June 2018.

*Environmental monitoring*

4.19 In June 2019, the Hellenic Centre for Marine Research published its report<sup><9></sup> which concluded that marine organisms were unaffected after December 2017 and there was no evidence of bioaccumulation or residues detected in the 3–20 metre zone following the conclusion of the clean-up operations.

*Limitation proceedings*

4.20 The 1992 Fund has cooperated closely and met on numerous occasions with the Limitation Fund administrator in relation to issues of applicability under the Conventions, regarding those claims which were filed both with the Limitation Fund and the 1992 Fund Claims Submission Office.

4.21 By 5 May 2018, (the date by which claims against the Limitation Fund were to be filed) the Limitation Fund administrator had received 84 claims, totalling EUR 94.4 million. Several claims have been filed at the Limitation Fund, which have not been filed with the 1992 Fund; conversely, some claimants have decided to only pursue their claims against the 1992 Fund rather than also filing claims against the Limitation Fund. The 1992 Fund has submitted its subrogated claims against the Limitation Fund.

---

<8> Fuel was seen to be leaking from one of the water ballast tanks. All other ballast tanks and accessible spaces were confirmed to be free from oil by the divers/contractors.

<9> The report was entitled 'The study of the short and medium-term environmental consequences of the sinking of the *Agia Zoni II* tanker on the marine ecosystem of the Saronikos Gulf'.

- 4.22 Shortly after the date by which claims were to be filed against the Limitation Fund, a number of lawyers representing 68 new claimants applied to the Court for permission to submit claims late against the Limitation Fund. The Limitation Fund administrator opposed the applications on the grounds that the claims verification procedure had already been completed. The Court issued its judgment in early July, dismissing the applications and thereby, allowing the Limitation Fund administrator to conclude the claims evaluation procedure by publishing the provisional assessments<sup><10></sup>, at which point every claimant with a claim against the Limitation Fund may accept or appeal the provisional assessment. Thereafter, Greek law permits all claimants to the Limitation Fund to file appeals against the list of accepted claims within 30 days of the issue of the list.
- 4.23 The 1992 Fund notes that, broadly speaking, there is a close correlation between the Limitation Fund administrator's assessments and those of the 1992 Fund's experts.
- 4.24 Given that eight parties appealed the Limitation Fund administrator's assessments, the 1992 Fund's lawyers commenced work on appeals by the 1992 Fund, against a number of the claims which have been accepted by the Limitation Fund administrator.
- 4.25 Therefore, there is a possibility that the legal proceedings arising from claims submitted against the Limitation Fund may take considerable time to resolve, although many of the claimants who have filed claims with the 1992 Fund as well as the Limitation Fund, will receive their compensation from the 1992 Fund.
- 4.26 At a court hearing in January 2020, the Limitation Fund administrator defended his assessment of the claims which had been submitted against the Limitation Fund, against those parties that had appealed his assessment. At that hearing, one central point of the dispute was the objection over the jurisdiction of the Court, since both the Limitation Fund administrator and the 1992 Fund argued that all appeals against the Limitation Fund administrator's assessment should be heard jointly in February 2020, before the Multi-Membered Court of First Instance, where all other appellants (including the 1992 Fund) had filed their appeals. Of all the appellants against the Limitation Fund administrator's assessments, only the two clean-up contracting companies chose to submit their appeals before the Uni-Membered Court. The 1992 Fund's Greek lawyers advise that the argument is not merely procedural, but also affects the overall review of cleaning expenses and other claims which should be done by the same court in a joint hearing.
- 4.27 If the 1992 Fund and the Limitation Fund administrator's submissions are upheld, the Court will refer the clean-up contracting companies' appeals before the Multi-Membered Court for a joint hearing with the other appeals on 25 February 2020.

## **5 Civil proceedings**

### *Legal proceedings commenced by the clean-up contractors*

- 5.1 In July 2019, the 1992 Fund was served with legal proceedings by two of the clean-up contractors for the balance of their unpaid claims after deducting the advance payments made by the 1992 Fund. One clean-up contractor claimed the sum of EUR 30.26 million, and the other clean-up contractor claimed a range of figures from EUR 24.74 million, to EUR 15.84 million plus USD 12.48 million<sup><11></sup>.
- 5.2 At a court hearing in November 2019 the 1992 Fund argued and the Court expressed concerns over, the claims progressing in parallel with the claimants' appeals against the Limitation Fund administrator's assessments, as this would possibly result in conflicting judgments, without adding any benefit to the resolution over the 'reasonableness' of the amounts claimed.

---

<sup><10></sup> At a figure of EUR 45.45 million.

<sup><11></sup> This was due to the different exchange rates used on the dates of the conclusion of the clean-up operations, or the exchange rate at the time of the initial submission of the claim to the 1992 Fund.

- 5.3 It was also the 1992 Fund's lawyer's view, that the claims were filed prematurely since they made no allowance for the sums which the claimants may receive from the distribution of the Limitation Fund, when this was finally concluded. On this basis, the 1992 Fund asked the Court to dismiss the claims, or (alternatively) to stay the proceedings until an unappealable judgment was issued on the appeals against the Limitation Fund administrator's assessment and in the meantime, the 1992 Fund's assessments of the claims will continue. The Court reserved judgment on the issues in order to review written pleadings and proceeded to the examination of witnesses on the merits.
- 5.4 In December 2019, the 1992 Fund was served with legal proceedings for EUR 8.9 million by the third clean-up contractor. The first hearing of this claim will take place in early March 2020. As these claims have all been filed at court, interest will begin to accrue on the claims filed.

*Legal proceedings commenced by 78 fisherfolk*

- 5.5 In September 2019, the 1992 Fund was served with legal proceedings by representatives of 78 fisherfolk (39 of whom have already filed claims with the 1992 Fund's claims submissions office). A court hearing set for early January 2020 was adjourned and a new hearing date is awaited.

**6 Investigation into the cause of the incident**

- 6.1 In addition to considering the crew's witness statements, the classification, survey and drydocking arrangements of the vessel, the 1992 Fund has continued to monitor the investigations into the cause of the sinking conducted by the Public Prosecutor and the Hellenic Bureau for Marine Casualties Investigation (HBMCI), which operates independently from the judicial authorities. The 1992 Fund also awaits the results of the investigation by the Public Prosecutor into the terms of the granting of the antipollution services agreement to the clean-up contractors.

*Investigation by the Technical University of Athens*

- 6.2 The 1992 Fund's lawyers obtained a copy of the technical report (328 pages) undertaken by the Technical University of Athens, School of Naval Architecture and Marine Engineering, which concludes that the *Agia Zoni II* sank after a blast loading, which created a breach through which the starboard nos. 3 and 4 ballast tanks were flooded, resulting in a heel of 25.78° and trim by the stern of 1.308 metres. Seawater then entered the ship through an open porthole and flooded the engine room, leading to loss of stability and sinking.

*Investigation by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor*

- 6.3 The investigation conducted by the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor concludes that based on the statutory seaworthiness certificates issued for the ship, the *Agia Zoni II* was considered to be seaworthy prior to the incident but that, as the *Agia Zoni II* was 45 years old, thereby becoming increasingly difficult to operate in the bunkering business, the shipowners had an incentive not to renew the ship's certificates. The *Agia Zoni II* had also already reached the end of the ability to renew certificates without substantial investment.
- 6.4 The ASNA report also states that the *Agia Zoni II* had enough freeboard to remain afloat, even if some of the empty ballast tanks had flooded. In order to sink, a steady ingress of water was necessary in the starboard hopper (side ballast) tanks nos. 2, 3 and 4, or nos. 3 and 4, and that the sinking of the *Agia Zoni II* could have only been caused due to ballasting by the undue operation (opening) of the cargo tank seals or manifolds, (which had been tied shut upon departure following loading at the oil terminal) from within the *Agia Zoni II*.

6.5 The ASNA report considers that the accident was attributed to the deliberate and negligent actions of the following persons:

- the shipowner;
- the general manager of the owning company;
- the Designated Person Ashore (DPA) of the owning company;
- the two crew members on board at the time of the incident; and
- representatives of the salvors and one of the clean-up contracting companies.

6.6 The ASNA report concludes by stating that ‘none of the above sought to save the ship; on the contrary it seems that the objective was to allow the ship to sink undisturbed and helpless. This demonstrates that it was a pre-planned objective and such development should not be disturbed’. The ASNA report also comments that ‘the interests served in this case are clearly evident from the economic benefit obtained by companies assigned by the shipowner to manage the anti-pollution and de-pollution operations’.

*Media reports*

6.7 Given the impact of the incident upon the Piraeus coastline, there have been many media reports in the Greek press regarding the conclusion of the investigations by the Greek authorities. Several such media reports have reported on the conclusion of the investigation conducted by ASNA, stating that the sinking of the *Agia Zoni II* was the result of deliberate sabotage.

*Impact of the reports on the 1992 Funds payment of compensation to particular claimants*

6.8 The 1992 Fund has sought legal advice from its legal advisors and Greek lawyers in relation to the question of whether the 1992 Fund should continue to assess, and make payment of, the claims for compensation submitted by the the representatives of the salvor/the clean-up contracting company which has been specifically mentioned in the ASNA report.

6.8.1 The 1992 Fund’s legal advisors and Greek lawyers have advised as follows:

Article 4(3) of the 1992 Fund Convention provides that:

‘If the Fund proves that the pollution damage resulted wholly or partially either from an act or omission done with the intent to cause damage by the person who suffered the damage or from the negligence of that person, the Fund may be exonerated wholly or partially from its obligation to pay compensation to such person. The Fund shall in any event be exonerated to the extent that the shipowner may have been exonerated under Article III, paragraph 3, of the 1992 Liability Convention. However, there shall be no such exoneration of the 1992 Fund with regard to preventive measures’.

It should be noted that the last sentence of Article 4(3) aims at protecting the environment and safeguarding that clean-up and preventive measures will be payable at all times.

In a similar manner, Article 300 of the Greek Civil Code provides that:

‘If the person that suffered the damage contributed to the damage or its extent by his own liability, the court may abstain from awarding compensation or may reduce the amount awarded’.

6.8.2 The 1992 Fund’s Greek lawyers have advised that the exercise of the right to claim clean-up expenses under the 1992 CLC and Fund Conventions by a party in the clean-up business that has intentionally caused the pollution in order to benefit from the right to claim compensation for clean-up services would be considered an abuse by the Greek courts under the provisions of the Greek legislation.

- 6.8.3 The lawyers also advise that it would be considered an abuse under the provisions of the European Convention of Human Rights due to the general principles of *dolus omnia corrumpit*<sup><12></sup>, since the party in question would appear to intentionally damage the environment for its own benefit, instead of protecting it as envisioned under Article 4(3) of the 1992 Fund Convention.
- 6.8.4 However, the 1992 Fund's Greek lawyers have also advised that the burden of proof rests upon the 1992 Fund to prove before the courts deciding on the issue of compensation, that the claimant intentionally caused the pollution aiming at receiving the clean-up compensation, or that the claimant had been condemned by a criminal court to that effect by an unappealable judgment. The mere suspicion of such action (even if mentioned in a report issued in the context of a criminal investigation such as the ASNA report) will not be sufficient to deny payment.
- 6.8.5 Accordingly, the lawyers advise that payment should only be made to the suspect party upon a suitably worded receipt and release document, which preserves the rights of the 1992 Fund to commence legal proceedings for the recovery of all amounts paid for pollution damages, should the suspect party eventually be condemned by a criminal court by an unappealable judgment.

#### *Recourse action*

- 6.8.6 The lawyers state that if the claimant is eventually condemned by a criminal court by an unappealable judgment and held to have intentionally caused the pollution, the possibility would exist for the 1992 Fund to commence a recourse action under Article 9(2) of the 1992 Fund Convention.

## **7 Director's considerations**

- 7.1 The Director notes that the 1992 Fund's experts are making good progress assessing the claims filed against the 1992 Fund.

#### *Wreck removal expenses*

- 7.2 With regard to the wreck removal expenses, due to the presence of an unknown quantity of oil on board the vessel and the possibility of it being released even after pumping operations had concluded, the decision to lift the wreck for environmental reasons and in order to remove any potential future pollution threats, could be considered pollution prevention<sup><13></sup>.
- 7.3 On the other hand, the 1992 Fund's lawyers have advised that following Greek law, it could be argued that it was necessary to remove the wreck as it was likely to constitute a hazard to navigation given its location at the edge of the main shipping anchorage area for the Piraeus Port. Even if the wreck had been completely sealed, the possibility of a further release of oil due to impact by another vessel could not be ruled out.
- 7.4 The 1992 Fund has apportioned the costs of the wreck removal to reflect the fact that it constituted both a threat to the environment and a hazard to navigation, and the 1992 Fund's experts have assessed the claims accordingly.

#### *Investigation into the cause of the incident*

- 7.5 The Director further notes that although the results of the investigations conducted by ASNA for the Public Prosecutor and the investigation by the Technical University of Athens have concluded, a number of other investigations, including the investigation into the granting of the clean-up contracts to the clean-up contractors are still awaited.

---

<12> English translation '*deceit unravels all*'.

<13> At the time of lifting the wreck, oil was seen to be leaking from one of the water ballast tanks.

- 7.6 The investigation by the Technical University of Athens concludes that the *Agia Zoni II* sank after an explosion. However, the report of the third Marine Accident Investigation Council (ASNA) for the Public Prosecutor concluded that the accident was attributed to the 'deliberate and negligent actions of a number of persons, including the shipowner, general manager, crew members aboard the vessel at the time of the incident, the DPA and the representatives of the salvor'<sup><14></sup>.
- 7.7 Regarding the ASNA report, of specific interest are the allegations made against the shipowner, the crew, the representatives of the salvor/one of the clean-up contracting companies.

*Director's recommendation*

- 7.8 The Director notes that the 1992 Fund's lawyers have advised that until such time as a party is held by an unappealable judgment to have intentionally caused the pollution in order to claim clean-up compensation, the 1992 Fund is obliged to pay to such a party the cost of preventive measures which includes clean-up expenses under Article 4(3) of the 1992 Fund Convention. Subsequently, if the claimant is eventually condemned by a criminal court by an unappealable judgment to have intentionally caused the pollution, the possibility would exist for the 1992 Fund to commence a recourse action under Article 9(2) of the 1992 Fund Convention.
- 7.9 In the Director's view, since the legal advice received states that under Article 4(3) of the 1992 Fund Convention, there shall be no exoneration of the 1992 Fund with regard to preventive measures, the Director recommends that he be instructed to make payment of the claims for preventive measures carried out by the party, upon a suitably worded receipt and release document, which preserves the rights of the 1992 Fund to commence legal proceedings for the recovery of all amounts paid for pollution damage, should the liability of that party be proven subsequently by an unappealable judgment.
- 7.10 The Director will continue to monitor this matter and will report the latest developments to the 1992 Fund Executive Committee at its next session.

**8 Action to be taken**

1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to decide whether to instruct the Director to make payment of compensation to the persons who carried out preventive measures for the expenses incurred.

---

<sup><14></sup> Which is also one of the clean-up contractor claimants who has submitted substantial claims against the Limitation Fund and against the 1992 Fund.