



INCIDENTS INVOLVING THE 1992 FUND

ERIKA

Note by the Director

Summary:	Six thousand nine hundred and seventy-eight claims for compensation have been submitted and 94.8% of the claims have been assessed. Compensation payments totalling €100.4 million ^{<1>} (£69 million) have been made in respect of 5 603 claims. Legal actions against the shipowner, his insurer and the 1992 Fund were taken by 795 claimants. Out-of-court settlements have been reached with 423 of these claimants. The Courts have rendered judgements in respect of 44 actions. Actions by 328 claimants are pending.
Action to be taken:	Information to be noted.

1 Introduction

- 1.1 This document sets out the general situation in respect of the *Erika* incident which occurred off the coast of Brittany (France) on 12 December 1999 and deals with recent developments.
- 1.2 As regards the incident, the clean-up operations, the removal of the oil from the wreck of the *Erika* and the impact of the spill, reference is made to the Annual Report 2004 (pages 74-75).
- 1.3 Since the Executive Committee's March 2005 session, no further developments have taken place in respect of Court surveys for evaluation of damage, the investigations into the cause of the incident and various Court actions, except as set out below.

2 Amount available for compensation

- 2.1 At the request of the shipowner, the Commercial Court in Nantes issued an order on 14 March 2000 opening limitation proceedings. The Court determined the limitation amount

^{<1>} The French franc was replaced by the Euro on 1 January 2002. Although 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, with a few exceptions, been given in Euros only. The rate of conversion is €1 = FFr6.55957. Conversion of Euro into Pounds sterling has been made on the basis of the rate at 6 September 2005 (€1 = £0.6774) except in the case of claims paid by the 1992 Fund where conversions have been made at the rate of exchange on the date of payment.

applicable to the *Erika* at FFfr84 247 733 corresponding to €12 843 484 (£8.7 million) and declared that the shipowner had constituted the limitation fund by means of a letter of guarantee issued by the shipowner's P&I insurer, Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual).

- 2.2 In 2002, the limitation fund was transferred from the Commercial Court in Nantes to the Commercial Court in Rennes.
- 2.3 The maximum amount available for compensation under the 1992 Civil Liability Convention and the 1992 Fund Convention (135 million SDR) was calculated by the Director at FFfr1 211 966 811 corresponding to €184 763 149 (£125 million). The Executive Committee endorsed this calculation at its April 2000 and October 2001 sessions. In October 2000 and October 2001, the Assembly endorsed the Committee's decision.

3 Undertakings by TotalFinaElf and the French Government

- 3.1 TotalFinaElf undertook not to pursue claims against the 1992 Fund or against the limitation fund constituted by the shipowner or his insurer relating to its costs arising from operations in respect of the wreck, the clean-up of shorelines and disposal of oily waste, and a publicity campaign to restore the image of the Atlantic coast, if and to the extent that the presentation of such claims would result in the total amount of all claims arising out of this incident exceeding the maximum amount of compensation available under the 1992 Conventions, ie 135 million SDR.
- 3.2 The French Government also undertook not to pursue claims for compensation against the 1992 Fund or the limitation fund established by the shipowner or his insurer if and to the extent that the presentation of such claims would result in the maximum amount available under the 1992 Conventions being exceeded. However the French Government's claims would rank before any claims by TotalFinaElf if funds were available after all other claims had been paid in full.

4 Other sources of funds

- 4.1 The French Government introduced a scheme to provide emergency payments to claimants in the fishery sector, 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. OFIMER stated that it based its payments on assessments made by Steamship Mutual and the 1992 Fund. OFIMER has paid €4.2 million (£2.9 million) to claimants in the fishery sector and €2.1 million (£1.4 million) to salt producers.
- 4.2 The French Government also introduced a scheme to provide supplementary payments to claimants in the tourism sector. Payments totalling €10.1million (£6.9 million) have been made under that scheme.

5 Level of the 1992 Fund's payments

- 5.1 At its 20th session, held in February 2003, the Executive Committee authorised the Director to increase the level of payments from 80% to 100% of the amount of the loss or damage actually suffered by the respective claimants as assessed by the 1992 Fund's experts when he considered it safe to do so. After a careful assessment, the Director considered in April 2003, in spite of the remaining uncertainties as to the total level of admissible claims, that there was a significant safety margin and decided to increase the level of payments to 100% (document 92FUND/EXC.20/7, paragraph 3.2.47).
- 5.2 At its 22nd session, held in October 2003, the Executive Committee authorised the Director to make payments to the French State to the extent that he considered there was a sufficient margin between the total amount of compensation available and the Fund's exposure in respect of other claims (document 92FUND/EXC.22/14, paragraph 3.4.11). After having reviewed his earlier

assessment of the total level of admissible claims, the Director decided that there was a sufficient margin to enable the 1992 Fund to commence payments to the French State. On 29 December 2003, the 1992 Fund paid €10 106 004 (£6 973 000) to the French State, corresponding to the French Government's subrogated claim in respect of the supplementary payments to claimants in the tourism sector (cf paragraph 4.2).

- 5.3 Having again reviewed the situation in the light of the developments during 2004, the Director decided that there was sufficient margin to enable the 1992 Fund to make a further payment to the French State. In October 2004 the French State was paid an amount of €5 964 338 (£4 145 000) relating to the French Government's supplementary payments made under the scheme to provide emergency payments to claimants in the fishery, mariculture, oyster farming and salt producing sectors administered by OFIMER (cf paragraph 4.1).
- 5.4 The Director is reviewing the situation in order to establish whether there is a sufficient margin to enable the 1992 Fund to make a further payment to the French State.

6 Claims situation

- 6.1 As at 10 September 2005, 6 978 claims for compensation had been submitted for a total of €208 million (£141 million). By that date 94.8% of the claims had been assessed. Eight hundred and sixteen claims, totalling €24.8 million (£16.8 million), have been rejected.
- 6.2 Payments for compensation had been made in respect of 5 603 claims for a total of €100.4 million (£69 million), out of which Steamship Mutual had paid €12.8 million (£8.8 million) and the 1992 Fund €87.6 million (£60.2 million).
- 6.3 The following table gives details of the situation in respect of claims in various categories

Claims situation as at 10 September 2005					
Category	Claims submitted	Claims assessed	Claims rejected	Payments made	
				Number of claims	Amounts €
Mariculture and oyster farming	1 005	1000	89	839	7 757 917
Shellfish gathering	530	527	109	367	889 189
Fishing boats	319	318	29	280	1 099 551
Fish and shellfish processors	51	50	6	43	976 832
Tourism	3 689	3 666	443	3 181	74 512 838
Property damage	711	439	98	330	2 059 060
Clean-up operations	148	139	13	121	6 603 740
Miscellaneous	525	476	29	442	6 508 469
Total	6 978	6 615	816	5 603	100 407 596

7 Legal proceedings

- 7.1 A number of Court actions for compensation have been brought in various jurisdictions in France.
- 7.2 The Conseil Général of Vendée and a number of other public and private bodies have brought actions in various Courts against the shipowner, Steamship Mutual, companies in the Group TotalFinaElf and others requesting that the defendants should be held jointly and severally liable for any claims not covered by the 1992 Civil Liability Convention.
- 7.3 The French State has brought legal actions against the shipowner, Steamship Mutual, the 1992 Fund and others claiming compensation for €190.5 million (£129 million).

- 7.4 In December 2002, four companies in the Group TotalFinaElf took a legal action against the shipowner, Steamship Mutual, the 1992 Fund and others claiming €143 million (£97 million) (cf paragraph 7.7).
- 7.5 Steamship Mutual has brought action in the Commercial Court in Rennes against the 1992 Fund, requesting *inter alia* the Court to note that, in the fulfilment of its obligations under the 1992 Civil Liability Convention, Steamship Mutual had paid €2 843 484 (£8.8 million) corresponding to the limitation amount applicable to the shipowner, in agreement with and under the control of the 1992 Fund and its Executive Committee. Steamship Mutual has further requested the Court to declare that it had fulfilled all its obligations under the 1992 Civil Liability Convention, that the limitation amount had been paid and that the shipowner was exonerated from his liability under the Convention. Steamship Mutual has also requested the Court to order the 1992 Fund to reimburse it any amount it will have paid in excess of the limitation amount.
- 7.6 There have been no significant developments since the Executive Committee's June 2005 session in these proceedings, which are described in detail in document 92FUND/EXC.24/2.
- 7.7 Claims totalling €497 million (£337 million) have been lodged against the shipowner's limitation fund constituted by the Steamship Mutual. This amount includes the claims by the French Government at €90.5 million (£129 million) and by TotalFinaElf SA at €70 million (£115 million) (cf paragraph 7.4). However, most of these claims, other than those of the French Government and TotalFinaElf, 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. The 1992 Fund has received formal notification from the liquidator of the limitation fund of the claims lodged against that fund.
- 7.8 Legal actions against the shipowner, Steamship Mutual and the 1992 Fund were taken by 795 claimants. By 10 September 2005 out-of-court settlements had been reached with 423 of these claimants. The Courts have rendered judgements in respect of 44 claims. Actions by 328 claimants (including 139 salt producers) were pending. The total amount claimed in the pending actions, excluding the claims by the French State and TotalFinaElf, was €65 million (£44 million).
- 7.9 The judgements against the 1992 Fund rendered after the Executive Committee's June 2005 session will be dealt with in an addendum to this document.
- 7.10 The 1992 Fund will continue the discussions with the claimants whose claims are not time-barred and are admissible in principle for the purpose of arriving at out-of-court settlements.

8 Court survey relating to the claims by salt producers

- 8.1 Efforts were made to minimise the impact of the spill on coastal salt production in marshes in Loire Atlantique and Vendée, and a number of monitoring and analytical programmes were implemented. Salt production resumed in Noirmoutier (Vendée) in mid-May 2000 as a result of an improvement in sea water quality, and bans which had been imposed to prevent the intake of sea water in Guérande (Loire Atlantique) were lifted on 23 May 2000. A group of independent producers in Guérande tried to resume salt production but were unable to take in sufficient sea water to produce salt. Members of a co-operative who account for some 70% of the salt production in Guérande decided not to produce salt in 2000 on the grounds of protecting market confidence in the product.
- 8.2 Claims for lost salt production due to delays to the start of the 2000 season caused by the imposed ban on water intake were received from producers (both independent and members of the co-operative) in Guérande and Noirmoutier as well as for cases caused by the late start of the 2001 season. Claims were also presented for costs of restoration of salt ponds in Guérande in 2001, as well as for the loss of production during 2001. The experts engaged by the 1992 Fund and

Steamship Mutual had considered that salt production was possible in 2000, but that as a result of the interruption caused by the ban on water intake, the maximum yield would have been 20% of that expected for the year. Interim compensation payments were made to the claimants on the basis of 20% lost production.

- 8.3 At the request of the 1992 Fund and Steamship Mutual, a court expert was appointed to examine whether 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. The court expert presented his report in late December 2004. The court expert concluded that salt production would have been feasible in 2000, but that as a result of the bans that were imposed, the maximum yield would have been between 4% and 11% of normal production.
- 8.4 The 1992 Fund approached claimants with the objective to explore the possibility of reaching out-of-court settlements in light of the court expert's findings.
- 8.5 Out-of-court settlements have been reached with 21 of the salt producers on the basis of a loss of production of 95%, and these salt producers have withdrawn their claims in relation to the restoration of ponds.

9 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 give the Director such instructions in respect of the handling of this incident as it may deem appropriate.
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