



INCIDENTS INVOLVING THE 1992 FUND

VOLGONEFT 139

Submitted by the Russian Federation

Objective of document:	To update the Executive Committee of the latest developments by the Russian Federation in relation to the incident.
Summary of the incident so far:	On 11 November 2007 the oil tanker <i>Volgoneft 139</i> broke in two parts in the Kerch Strait between the Asov and Black Seas and approximately 2 000 tonnes of oil (carried as cargo) were spilt.
Recent developments:	The Russian Federation submitted a report on the incident to the Executive Committee at its March 2009 session (document 92FUND/EXC.44/6/1). . At that session, during a presentation by the Russian Federation of the incident particulars, several issues were raised and the Russian Federation was requested to take relevant actions and inform the Committee accordingly.
Action to be taken:	Information to be noted, particularly as regards the issues set out in paragraph 6.

1 Background information

- 1.1 On 11 November 2007 the oil tanker *Volgoneft 139* broke in two parts in the Kerch Strait between the Asov and Black Seas and approximately 2 000 tonnes of oil (carried as cargo) were spilt. Two States were affected by the oil spill, namely the Russian Federation and Ukraine. Respectively those two States were mostly involved in the immediate incident response and further clean-up operations.
- 1.2 In accordance with the request by the Executive Committee the Russian Federation prepared and introduced comprehensive information on the incident in document 92FUND/EXC.44/6/1, submitted to the March 2009 session of the Executive Committee. The document was supplemented with a PowerPoint presentation and oral statements .
- 1.3 Among other issues, the Committee was informed that the Ministry of Transport of the Russian Federation had been nominated by the Russian Government to coordinate relations with the 1992 Fund in connection with the incident.
- 1.4 During discussions of the Russian report at the 44th session of the Committee several questions were raised and the Russian Federation was requested to take actions and to inform the Committee.

2 Legal issues

- 2.1 The Federal State Unitary Enterprise 'Novorossisk Salvage Company' appealed to the Arbitration Court with regard to the claim for compensation for expenses spent on rescue and clean-up operation in relation to the incident. The legal status of the Enterprise is a State one. At the same time neither the Ministry of Transport of Russia nor the Russian Government have influence on the daily operation of the Enterprise. Moreover, the general requirement of such State institutions is to provide efficient business activity to save governmental money as much as possible. Fulfilling that idea the Enterprise supports its claim in the Court. The latest information of this particular claim confirms that the Enterprise has reached an agreement with the Fund on the actual expenses to be considered by the Court and the Fund.
- 2.2 The Federal Services on supervision of compliance with nature related legislation 'Rosprirodnadsor' submitted to the same court a claim calculated on the basis of a legal Act by the Ministry of Nature of Russia. The claim was calculated theoretically with no reference to any actual loss. The mentioned legal Act has official status in Russia and is a part of national legislation. Rosprirodnadsor is a governmental institution but is independent in its activity on supervision of compliance with the legislation by any body in Russia. So, both the Government and the Ministry of Transport of Russia, as the governmental coordinator of the issue, have no direct power to instruct Rosprirodnadsor in its claims within its responsibilities.
- 2.3 The legal Act used by Rosprirodnadsor has two methods of claim calculation, that is, a theoretical one (used by Rosprirodnadsor in this particular case) and the factual one (similar to the method of the Fund). The factual method should be used if actual losses are available.
- 2.4 Bearing in mind the requirements of the 1992 Fund Convention and the particulars of the national legislation, acting as coordinator of the incident, on behalf of the Government, the Ministry of Transport of the Russian Federation forwarded a formal request to the Russian Government with the proposal to invite Rosprirodnadsor to reconsider its claim and the Government has supported the approach of the Ministry. At the same time, upon the request of the Ministry of Transport of Russia, the Government has initiated investigations and possible amendments of the related legal Act of the Ministry of Nature of Russia to provide full compliance with the international provisions.
- 2.5 In accordance with the national procedures, both of the related issues are to be decided (negatively or positively) by the end of June 2009.
- 2.6 Krasnodar regional local government submitted to the same Court a claim for actual losses and provided supporting documentation. It should be noted that, in accordance with the national legislation, the local governments are quite independent from the Federal Government especially in their rights to protect local territories and the people. It is expected that the Krasnodar regional local government and the Fund will reach an agreement as to the amount of compensation to be paid.
- 2.7 Krasnodar regional local government and the Ministry of Emergency of the Russian Federation applied to the Federal Government of Russia with a request for compensation for their participation in the oil spill response and clean-up operations. The Federal Government supported the appeal and paid a total amount of about RUB 45 000 000 (approximately US\$ 1.9 million) in compensation. Those payments are not included in any claim currently being considered by the Court.
- 2.8 The Court had a last hearing on 31 March 2009 and the next hearing is expected on 7 June 2009. The results of the June hearing will be reported to the Committee orally by the Russian delegation.

3 'Insurance gap'

- 3.1 As previously reported to the Committee, the *Volgoneft 139* was insured with limitation of 1.5 million SDR, less than required by the Convention. According to the internal investigation this happened due to a different interpretation of the national and international provisions in the relevant legislation. In spite of the fact that Russian main law stipulates that international agreements of

Russia prevail against any national law, in the case of conflict the Court (which is an absolutely independent one) decided to support the insurance cover actually held for the *Volgoneft 139*.

- 3.2 Understanding the possibility that similar difficulties could arise for other vessels under the Russian flag, the Ministry of Transport of Russia initiated all necessary national provisions to make the latest amendments to the Convention fully effective in Russia. Additionally all the certificates issued to Russian-flagged vessels were verified and it was confirmed that all discrepancies found were corrected.
- 3.3 On a Governmental level, measures for avoiding future discrepancies or misunderstanding in the interpretation of international and national provisions in the maritime field were implemented.
- 3.4 To solve the issue of the 'Insurance gap' in the case of the *Volgoneft 139* consideration could be given to involving the national reserve fund in compensation for parts of the claims mentioned in paragraph 2.7 above.

4 Current status of the affected area

In accordance with the recent reports received, all required actions of clean up have been completed. About 80 000 tonnes of oily waste has been collected in one place in the Krasnodar region. Utilisation of that waste is still under consideration and the main issue in this respect is financing of the utilisation. The Krasnodar regional local government has requested the national reserve fund to provide financial support for the work but a decision has not yet been made on that request.

5 Cooperation with the Fund

As reported by the Director, several meetings of Russian and 1992 Fund representatives were arranged. Russia confirms its readiness to continue any kind of cooperation which might include meetings, fact-finding missions or any other missions, provision of information, national arrangements etc.

6 Action to be taken by the Executive Committee

The Executive Committee is invited to take note of the information contained in this document, in particular as regards:

- (a) the actions by Russia in relation to the 'methodika' claim (section 2);
 - (b) the consideration being given to possible actions in relation to the issue of the 'Insurance gap' (section 3);
 - (c) the Russian Federation's readiness to continue the cooperation between the Director and the Russian Federation (section 5); and
 - (d) to instruct the Director as it may deem appropriate as regards possible payments.
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