



INTERNATIONAL  
OIL POLLUTION  
COMPENSATION  
FUNDS 1971  
AND 1992

FONDS INTERNATIONAUX  
D'INDEMNISATION DE 1971  
ET DE 1992 POUR LES  
DOMMAGES DUS À LA  
POLLUTION PAR LES  
HYDROCARBURES

FONDO INTERNACIONAL  
DE INDEMNIZACIÓN DE  
DAÑOS DEBIDOS A LA  
CONTAMINACIÓN POR  
HIDROCARBUROS  
DE 1971 Y 1992

## The February 2000 session of the 1992 Fund Executive Committee- In brief

18 February 2000

### Erika incident

The session of the Executive Committee of the 1992 Fund held on 15 February 2000 was convened primarily to consider the *Erika* incident which occurred south of Brittany in the Bay of Biscay, France, on 12 December 1999.

#### *The incident*

The *Erika* was carrying some 30 000 tonnes of heavy fuel oil when she broke in two parts, spilling some 15 000 tonnes of such oil. The two parts sank to a depth of some 120 metres, containing approximately 15 000 tonnes of heavy fuel oil.

Clean-up operations are continuing to be carried out over some 400 kilometres of coastline.

The French oil company Total Fina SA has undertaken to carry out and to finance directly inspections of the two parts of the wreck and any operations to prevent further oil from escaping, including any oil removal operations.

#### *Claims Handling Office*

The 1992 Fund and the liability insurer of the *Erika* (the Steamship Mutual Underwriting Association (Bermuda) Ltd) have established a Claims Handling Office in Lorient (France). A number of claims have been received in the Claims Handling Office and technical experts have been engaged to examine the claims.

#### *Undertaking by Total Fina and the French Government*

Total Fina has undertaken not to pursue any claims against the 1992 Fund or the shipowner's limitation fund for the costs of the operations relating to the wreck referred to above unless the total amount of compensation available under the 1992 Civil Liability Convention and the 1992 Fund Convention, approximately US\$185 million or FF1 200 million, is sufficient for all other claims to be paid in full ('to stand last in the queue'). Total Fina has made a corresponding undertaking in respect of the cost of the collection and disposal of the oily waste generated by the clean-up operations, the cost of its participation in the beach clean-up to a maximum of FF40 million and the cost of a publicity campaign to restore the tourist image of the Atlantic coast up to a maximum of FF30 million.

The French Government has also undertaken not to pursue claims against the 1992 Fund unless the total amount of compensation available is sufficient to pay all claims other than that of Total Fina in full. This undertaking covers all expenses incurred by the French State in combating the pollution, among other things those expenses falling within the framework of the French oil spill contingency plan, Plan Polmar, including expenses incurred by local authorities paid or reimbursed through Plan Polmar. The undertaking covers also all measures which the State might take in different sectors to reduce the consequences of the incident, including any publicity campaign to this effect.

During the discussion in the Committee it was emphasised that the 1992 Fund should make all efforts to make compensation available to victims as soon as possible, in order to demonstrate that the regime of compensation established by the 1992 Conventions worked satisfactorily and that there was no need to create any alternative liability scheme.

The Executive Committee authorised the Director to make final settlements of all claims, provided that they did not give rise to questions of principle which had not previously been decided by the Committee.

The Steamship Mutual has agreed to provide funds for interim payments in appropriate cases up to the next Executive Committee session in April 2000.

The Executive Committee shared the Director's view that it was not possible at this stage to make any meaningful estimate of the total amounts of the established claims and that this applied in particular to the claims in the fishery and tourism sectors. In view of this uncertainty, the Committee decided, therefore, that the Director's authority to make payments should for the time being be limited to provisional payments under the 1992 Fund's Internal Regulations. The Director has the authority to make provisional payments up to a total of FFr54 million.

The Executive Committee will reassess the level of payments at its next session.

#### *Funding of compensation payments*

An extraordinary session of the 1992 Fund Assembly will be held in the week commencing 3 April 2000 to consider levying contributions to finance compensation payments.

#### *Publicity campaigns*

The Executive Committee considered a request from the Département de Vendée that the 1992 Fund should pay the cost of a publicity campaign to counteract the negative consequences for the tourism industry of the *Erika* incident. The Département de Vendée had stated that it did not have funds to cover this exceptional campaign, and that in view of the necessary preparations for such a campaign it was important that an agreement in principle could be reached with the 1992 Fund as soon as possible.

The Ministry of Tourism is considering carrying out a co-ordinated publicity campaign covering the entire Atlantic coast. Some Départements other than Vendée are also considering carrying out marketing campaigns.

The Executive Committee accepted that in principle it appeared reasonable that measures should be taken to counteract the negative consequences for the tourism industry of the incident. The Committee emphasised the need for co-ordination of any publicity campaigns to this effect and considered that the French Government should co-ordinate any such campaigns. The Committee considered that the French Government and the 1992 Fund should work together on this issue.

#### **Revision of the maximum amount of compensation available**

The United Kingdom delegation drew attention to the fact that in some recent cases, even with the higher amount of compensation available under the 1992 Conventions compared with the original Conventions of 1969 and 1971, there were still difficulties in providing rapid compensation to victims. That delegation requested that the 1992 Fund Assembly should consider, at its next session in April 2000, the question of an increase in the limits of compensation laid down in the 1992 Conventions by means of the special procedure for amending these limits. Any decision in this respect will have to be taken by the Legal Committee of the International Maritime Organization.