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Report to the European Council on action to deal with the effects of the Prestige disaster

CONTENTS

1.	Introduction.....	4
2.	Prevention: civil protection, maritime safety and international aspects	5
2.1.	Civil protection	5
2.1.1.	Mechanisms for cooperation between national authorities	5
2.1.2.	Scientific expertise.....	6
2.2.	Maritime Safety	6
2.2.1.	Early implementation of the measures adopted by the European Parliament and the Council	6
2.2.1.1.	Early establishment of the European Maritime Safety Agency.....	6
2.2.1.2.	Blacklist of substandard vessels.	7
2.2.1.3.	Places of refuge.....	7
2.2.1.4.	Uneven transposition by Member States of the Erika I and II packages.	7
2.2.1.5.	State aid in the maritime transport sector	8
2.2.1.6.	Voluntary agreement with oil companies	8
2.2.2.	New Commission proposals	9
2.2.2.1.	Carriage of heavy fuel-oil and early withdrawal of single-hulled vessels.....	9
2.2.2.2.	Training and skills of seafarers.....	9
2.2.2.3.	Criminal sanctions	9
2.2.3.	European initiatives in the international arena	10
2.2.3.1.	Active support for the European Community's membership of the International Maritime Organisation (IMO).....	10
2.2.3.2.	Requests to apply Community legislation on maritime safety internationally.....	10
2.2.3.3.	United Nations Convention of the Law of the Sea	11
2.2.3.4.	Improved levels of compensation for victims of pollution.....	11
2.2.3.5.	Civil liability.....	11
3.	Harnessing Community funding and technical resources for immediate repair action and restoration of economic potential.....	12
3.1.	European Regional Development Fund.....	12
3.2.	Cohesion Fund	13
3.3.	Interreg III Community initiative (cross-border strand).....	13

3.4.	FIFG/aid to the shellfish industry, aquaculture and fisheries	13
3.5.	EU Solidarity Fund	14
3.6.	Research into new technologies.....	14
3.7.	Pilot projects and other actions.....	15
3.8.	Anti-pollution measures and restoration of the environment	15
3.8.1.	Environmental impact assessment.....	15
3.8.2.	Repair and compensation of environmental damage.....	15
3.8.3.	Pooling anti-pollution resources and exchanging experience.....	16
4.	Conclusion	16

1. INTRODUCTION

A far-reaching cross-border catastrophe

On 13 November 2002, the Prestige, a Bahamas-flagged single-hulled tanker loaded with 77 000 tonnes of heavy fuel oil, was involved in an accident off the west coast of Galicia. Attempted towing operations were hampered by extremely bad weather conditions and, on 19 November, the vessel sank to some 4 000 metres below sea level. A large quantity of fuel oil was released into the sea when the ship sank,¹ with further oil spillage observed for a considerable time after that. The pollution affected, and is still affecting, the coastlines of Spain, Portugal and even France. It is calculated that approximately 40 000 tonnes of fuel oil has leaked out of the tanker.

The scientific committee advising the Spanish government on making the wreck safe has also identified other technical solutions such as pumping out the remaining oil from the tanks and burying the wreck in a concrete sarcophagus in order to seal it up definitively. Although the costs of implementing the various solutions vary, the Spanish authorities have calculated that expenditure of between approximately EUR 150 and 200 million was still needed.

Fast reactions and practical responses from the European Community

Thanks to a fast information system - President Prodi was able to meet the Spanish Prime Minister, Mr Aznar, as early as 24 November - there was an immediate demonstration of European solidarity. In response to the Spanish authorities' request for help, several Member States made available floating barriers, various ships and surveillance planes

On 3 December, the Commission adopted a communication on improving safety at sea in response to the Prestige accident,² particularly on speeding up the establishment of the European Maritime Safety Agency, prohibiting the carriage of heavy fuel oil by single-hulled vessels and the creation of penalties. The communication was forwarded to the European Parliament and the Council where it met with wide support. The Transport Council of 6 December and the Environment Council of 9 November also confirmed the well-founded nature of the proposed approach and the particularly urgent need to implement these measures. Community action is guided by EU solidarity with its Member States and their citizens. It should not, however, supersede the responsibility of third parties who, under the "polluter-pays" principle, are liable in the first instance for the damage caused by them, or discourage preventative measures at both Member State and Community level.

Presentation of a report to the spring European Council in accordance with the mandate of the Copenhagen European Council

¹ Approximately 22 000 tonnes (compared with the 20 000 tonnes spilt out of the total of 35 000 tonnes carried by the Erika).

² COM(2002) 681 final of 3 December 2002 on improving safety at sea in response to the Prestige accident.

At the Copenhagen European Council of 12 and 13 December 2002,³ the Heads of State and Government reaffirmed the conclusions adopted at the Nice European Council in December 2000 with regard to the early implementation of the Erika I and Erika II legislative packages. They also called upon the Commission to present a progress report at their next meeting (paragraph 34 of the Conclusions).

The text which follows outlines the many actions already undertaken or planned at European level and in the Member States. In particular it summarises and develops the points made by President Prodi in his letter of 17 January 2003 to the President of the European Council, Mr Simitis, and forwarded to the other Heads of State and Government. Aspects of prevention are discussed and also of repairing, and compensating for, damage.

2. PREVENTION: CIVIL PROTECTION, MARITIME SAFETY AND INTERNATIONAL ASPECTS

2.1. Civil protection

2.1.1. Mechanisms for cooperation between national authorities

The cooperation mechanisms specifically involving the Commission's monitoring and information centre,⁴ deployed in recent months, made it possible to respond immediately to the Spanish authorities' requests for assistance with specialised resources. The Commission thus facilitated the assistance made available by other Member States, including the following resources: 14 specialised vessels sent by eight European countries, more than 20 km of floating barriers and several surveillance planes.

Action outstanding: continue to use the Commission's response centre to make rescue means available.

Lead bodies: Commission and Member States.

³ Presidency Conclusions: Copenhagen European Council, Document No 15917/02 of 29 January 2003.

⁴ Council Decision of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (2001/792/CE, Euratom).

2.1.2. *Scientific expertise*

The Joint Research Centre provided technical and scientific expertise to analyse the effects of the disaster based on the first satellite images gathered by the European Space Agency. It also served as a coordination centre for the provision of emergency assistance in the event of major accidents within the Commission's sphere of competence in terms of civil protection.

In addition, the Commission notified Spain of the names of experts available to join the scientific committee set up by the Spanish Government to decide, on a scientific basis, the list of actions to be undertaken.

Action outstanding: feedback on the use made of the list of experts available to join the scientific committee.

Lead body: the Member State concerned.

2.2. **Maritime Safety**

2.2.1. *Early implementation of the measures adopted by the European Parliament and the Council*

2.2.1.1. Early establishment of the European Maritime Safety Agency

The establishment of the European Maritime Safety Agency, whose role is to improve the efficiency of the application of Community rules on maritime safety has been speeded up, as the Commission has decided to accommodate it temporarily on Commission premises while waiting for the siting of the Agency's own headquarters to be decided by the Council.

On 4 December 2002, the Administrative Board took a series of administrative and technical decisions to make the Agency operational as soon as possible. On 29 January 2003, the Executive Director of the Agency was appointed. He is currently recruiting staff for the Agency and setting up its administrative structure.

There are plans to further define and expand the jurisdiction of the Agency to enable it to purchase or lease vessels equipped with advanced technology or other anti-pollution equipment to serve the European Union. The added value of such an initiative would be to augment the present capacity for action. All decisions will be taken on the basis of maximum efficiency and optimal budgetary impact. Funding has already been set aside in the Annual Policy Strategy for 2004 adopted by the Commission on 5 March 2003.⁵ Activities will be developed in coordination with the Commission's civil protection mechanism.

⁵ COM(2003)83 of 5 March 2003, Communication from the Commission to the European Parliament and the Council: Annual Policy Strategy for 2004.

Action outstanding: determine the site of the Agency's headquarters and support its activities.

Lead body: Council.

Further define and expand the jurisdiction of the Agency.

Lead body: Commission (to present a proposal).

2.2.1.2. Blacklist of substandard vessels.

The Commission began to compile an initial blacklist of substandard vessels in December 2002. It is an indicative list of vessels which would be prohibited if the provisions of the Erika I package were in force.

2.2.1.3. Places of refuge

On 31 January 2003, the Commission held an initial meeting with the Member States in order to make preparations for identifying places of refuge to accommodate ships in distress in the waters under their jurisdiction as laid down in the Directive establishing a Community vessel traffic monitoring and information system. The meeting analysed the possible content of the national plans and places of refuge for ships in distress.

Action outstanding: provision of relevant documentation needed to adopt national plans for accommodating vessels and the designation of places of refuge by 1 July 2003.

Lead bodies: Member States.

2.2.1.4. Uneven transposition by Member States of the Erika I and II packages.

The Prestige accident confirms the validity of the measures included in the two sets of legislative proposals, Erika I (March 2000) and Erika II (December 2000). If the measures adopted by the European Union had been in force at the time, the Prestige would have been taken out of service two months before the disaster.

In line with the legislative proposals, the Member States must incorporate into their national legislation the Directives on port State control and on classification societies by 22 July 2003 and the Directive establishing a Community vessel traffic monitoring and information system by 5 February 2004. The Regulation on the withdrawal of single-hulled oil tankers is applicable as of 1 January 2003.

The information received by the Commission shows that the process is far from completed in the majority of Member States. At the Nice and Copenhagen European Councils, the Member States had undertaken to introduce the measures early, but so far only three Member States - Denmark, Germany and Spain - have notified the Commission of the national measures transposing the legislation.

Action outstanding: to incorporate the directives into the national legislation of all the Member States.

Lead bodies: Member States.

2.2.1.5. State aid in the maritime transport sector

State aid to maritime transport may be authorised under certain conditions,⁶ in particular, to improve on-board safety and to equip ships to standards which exceed the mandatory safety and environmental standards.⁷ Aid to shipbuilding is more limited as it is not normally compatible with the Treaty.

Provided that it reflects the economic loss suffered by the owner, aid to scrapping may also be authorised. There is a precedent for this: Italy successfully developed a system for the voluntary withdrawal of single-hulled vessels, particularly the oldest, which was approved in 2002. This is an avenue which might be explored by interested Member States.

At any event, the Commission must examine requests on a case by case basis, subject to the notification of State aid by Member States, and in particular must carefully examine the effects on competition.

Action outstanding: examination of any applications presented by Member States.

Lead body: Commission.

2.2.1.6. Voluntary agreement with oil companies

The Transport Council of 6 December asked the Member States to conclude agreements with their respective industries in order to guarantee high-quality transport and ban old single-hulled oil tankers from carrying heavy fuel oil. The Council also asked the Commission to draw up a model agreement. Since December 2002 the Commission has therefore been conducting discussions with European oil companies in order to define a Code of Good Practice.

Such an agreement would make it possible to speed up the application of measures banning the carriage of heavy fuel oil on board single-hulled oil tankers without waiting for the legislative process to run its course. It would, above all, ensure that vessels in transit through the exclusive economic area, i.e. those not chartered by European oil companies, are covered, since international agreements permit Community legislation to cover only vessels calling into European Union ports.

⁶ Community guidelines on State aid to maritime transport (Official Journal C 205, 5.7.1997) and the Communication COM(1993) 66 of 24 February 1993.

⁷ Community guidelines on State aid for environmental protection (Official Journal C 37, 3.2.2001).

For the time being, however, European industry has been highly reluctant to commit itself to a voluntary agreement, and has expressed its preference for the regulatory approach ensuring equal treatment with competing oil companies in third countries.

2.2.2. *New Commission proposals*

2.2.2.1. Carriage of heavy fuel-oil and early withdrawal of single-hulled vessels

On 20 December 2002, the Commission forwarded a proposal for a Regulation to the European Parliament and the Council, proposing:

- prohibiting the entry of single-hulled oil tankers carrying heavy oil products, regardless of flag State, into European Union ports, terminals and anchorages;
- bringing forward the deadlines for the removal of single-hulled oil tankers.

Action outstanding: complete the ban on the carriage of heavy fuel-oil on board single-hulled vessels and the early withdrawal of such tankers.

Lead bodies: European Parliament and Council (final agreement at the end of the Greek Presidency).

2.2.2.2. Training and skills of seafarers

On 13 January 2003, the Commission forwarded to the European Parliament and the Council a proposal for a Directive on the recognition of seafarers' certificates of competency in order to guarantee a minimum level of training. A political agreement should be reached at the Transport Council in March 2003.

The proposal makes provision for a Community-wide recognition system for certificates of competency to ensure that non-Community seafarers working on board Community ships are trained and certified to appropriate standards.

Outstanding action: adoption of the proposed Directive on the recognition of seafarers' certificates of competency.

Lead bodies: European Parliament and Council.

2.2.2.3. Criminal sanctions

In response to the request of the Copenhagen European Council, and without excluding the possibility of undertaking other legislative initiatives, the Commission is about to adopt a Directive to be proposed to the European Parliament and the Council on pollution by ships and the introduction of sanctions, including criminal sanctions. The proposal covers illegal discharges of waste and major oil pollution.

The proposal covers the entire chain of responsibility (shipowner, charterer, classification society, etc.) and will make good the shortcomings of Community law regarding deliberate or accidental pollution by ships. The parties responsible for such pollution will no longer be able to shirk their responsibilities.

Action outstanding: to reach an agreement following the Commission's adoption of the proposal for a Directive establishing a system of criminal sanctions for the parties responsible for marine pollution.

Lead bodies: European Parliament and Council (final agreement at the end of the Greek Presidency).

2.2.3. *European initiatives in the international arena*

Only 34% of the world fleet is controlled by European shipowners. The majority are registered under the flags of, and are therefore under the jurisdiction of, third countries. In his letter to Mr Simitis, President Prodi stressed how important it was for the European Union to be able to effect a major change in its policy regarding the countries politically responsible for the economic and ecological aftermath of oil spills, particularly those countries which, by offering flags of convenience or by slack controls, permit dangerous and unsuitable ships to operate with impunity in international waters. In particular, he suggested that the Commission propose to the Council that these countries be approached directly since the majority maintain close links with the European Union.

2.2.3.1. Active support for the European Community's membership of the International Maritime Organisation (IMO)

On 9 April 2002, the Commission sent a recommendation to the Council advocating the European Community's joining the IMO in order to enable it to have its say in preparing and adopting more stringent international rules on maritime safety. As the Copenhagen European Council pointed out, the European Union must "play a leading role in international efforts in pursuit of this objective, in particular within the IMO".

Action outstanding: rapid referral of the proposal.

Lead body: Council.

2.2.3.2. Requests to apply Community legislation on maritime safety internationally

The Commission has asked neighbouring countries, particularly Russia and Europe's Mediterranean partners, under the agreements they have with the European Union, to adopt measures banning the carriage of heavy fuel-oil and speeding up the withdrawal of single-hulled oil tankers equivalent to those of the European Union.

Outstanding action: to continue negotiations with third countries and also with Russia regarding the conditions for the operation of oil tankers in sea ice zones.

Lead bodies: Commission and Member States.

2.2.3.3. United Nations Convention of the Law of the Sea

The European Union must take the initiative in proposing the revision of the United Nations Convention of the Law of the Sea to afford better protection for coastal states, including within the 200-mile exclusive economic area, against risks associated with the passage of ships constituting a danger to the environment and which do not comply with safety standards.

Outstanding action: to obtain a negotiating mandate from the Council with a view to revising the Convention.

Lead body: Commission.

In the meantime, coordinated European Union action will be needed to support the requests made, in particular by France, for referral to the IMO advocating the identification and protection of areas at particular risk due to their resources and the specific nature of the transit traffic.

Lead bodies: Member States.

2.2.3.4. Improved levels of compensation for victims of pollution

A diplomatic conference will be held at the International Maritime Organisation (IMO) from 12 to 16 May 2003 to create a third level of compensation for victims of oil spills.

The Commission, jointly with France and Spain, has forwarded a document to the IMO to change the limit above which the shipowner loses the right to limit liability from EUR 185 million to EUR 1 billion.

Action outstanding: obtain the support of all Member States on this issue within the IMO.

Lead bodies: Member States.

Failing this, immediate adoption of the proposed Regulation establishing a special European fund endowed with EUR 1 billion, in accordance with the undertaking made by the Council on 6 December 2002, and creation of the fund by the end of 2003.

Lead body: Council.

2.2.3.5. Civil liability

The Commission has proposed amending the international compensation and liability mechanism under the International Convention on civil liability for

oil pollution damage in order to be able to make the parties responsible for pollution financial liable.

The meeting of 3 and 7 February 2003 issued a favourable opinion regarding the need to review the civil liability system without, however, indicating the necessary improvements or the timetable for this action.

Action outstanding: obtain the support of all Member States on this issue within the IMO.

Lead bodies: Member States.

Failing that, the European Commission will propose a compensation and liability mechanism for the enlarged European Union.

3. HARNESSING COMMUNITY FUNDING AND TECHNICAL RESOURCES FOR IMMEDIATE REPAIR ACTION AND RESTORATION OF ECONOMIC POTENTIAL

3.1. European Regional Development Fund

For action to repair the effects of the oil spill on the territory of regions in the Member States affected, the authorities concerned may have recourse to cofinancing from the ERDF up to the limit of the sums allocated for the period 2000-2006, while respecting the economic development priorities and excluding costs covered by insurance.

Objective 1: The authorities responsible for the operational programme (OP) for Galicia (2000-2006) may use an existing OP scheme to cofinance the cleaning of some beaches. Other measures may also be used to deal with the effects of the disaster, and not just its environmental repercussions, since the managing authority may adjust the remaining programming to devote more resources to this type of action up to the limit of the amounts allocated per priority area in the programme. The Commission is willing to help Spain adjust its Structural Fund programming as quickly as possible. A decision cannot be taken until the technical solutions to be applied with regard both to the wreck itself and to the cleaning of a number of inaccessible sections of coastline, and the respective costs thereof, are identified more precisely.

Objective 2: To combat the effects of the oil spill on the coastline, ERDF funds may be used for cleaning beaches, on condition that these areas are eligible under the region's Objective 2 programmes. In the Aquitaine region this is true of the Basque coastline except for the beaches at Biarritz. The majority of the coastline in the Poitou Charente region is eligible under Objective 2. In addition, the Objective 2 programme may be harnessed as of now to fund schemes to support tourism throughout the region.

Action outstanding: possible adjustment of the operational programmes.

Lead bodies: Member states/competent authorities concerned (applications) - Commission (agreement).

3.2. Cohesion Fund

Aid from the Cohesion Fund may be forthcoming if the Spanish authorities wish to apply for it, subject to the usual procedures, for the necessary work on the wreck, which is located in Spain's exclusive economic area. Although Spain's environmental priorities for the period 2000-2006 are limited to the sectors of waste, rehabilitation and procurement, many coastal regeneration projects have been cofinanced in this country in the past. The Commission may, therefore, after consideration, agree to amend the programme and adopt the necessary projects, if so requested by the Spanish authorities. The amount allocated to Spain under the fund for the period 2000-2006 which has not yet been committed comes to approximately EUR 6 200 million.

Action outstanding: possible adjustment of the programme by the Commission in response to a request from the Member State concerned.

Lead bodies: Member State concerned (application) - Commission (agreement).

3.3. Interreg III Community initiative (cross-border strand)

The Commission has informed the Member States on the Atlantic coast concerned that prevention, control and restoration projects, such as sealing up or pumping out the wreck of the Prestige, may be eligible under the cross-border strand of Interreg (funded by the ERDF) since such operations are clearly of a cross-border nature. The relevant programmes which already provide for the funding of such operations up to EUR 23 million may be revised if necessary.

Action outstanding: possibility of using existing measures up to EUR 23 million.

Lead bodies: Member States concerned.

Further to that, possible adjustment of the programmes.

Lead bodies: Member States concerned (application) - Commission (agreement).

3.4. FIFG/aid to the shellfish industry, aquaculture and fisheries

On 20 December 2002, the Council adopted a Regulation instituting specific measures to compensate the Spanish fisheries, shellfish industry and aquaculture, affected by the oil spills from the Prestige. In particular, it permits the shellfish and aquaculture sectors to benefit from aid for temporary cessation of activities previously granted only to fisheries. Damaged fishing and aquaculture equipment may also be repaired or

reconstructed thanks to reallocation of the financial instrument for fisheries guidance (FIFG).

The Community has also authorised Spain to top up the funding with part of the amount (EUR 30 million) available in the absence of a fisheries agreement with Morocco.

Action outstanding: if the extent of damage is confirmed, the Commission is willing to submit a proposal to the Council similar to that presented for Galicia for the French regions affected with a view to extending the scope of the provisions which exist under the present FIFG allocations.

Lead body: the Member State concerned.

3.5. EU Solidarity Fund

The EU Solidarity Fund was created in 2002 to offer fast assistance to populations and regions affected by natural disasters. It remains to be ascertained whether the Prestige disaster is eligible for aid under this fund.⁸

Aid of the volume required would necessitate amending the legal basis of the fund. The Commission is willing to propose such an amendment to the Council. The amendment would adjust the mechanism in line with the Commission's initial proposal submitted in September 2002. It might include the following: adjusting the Solidarity Fund to cover disasters of a technological or environmental nature, lowering the threshold for action (currently EUR 3 billion or 0.6% of the GNP of the State concerned) and extending the eligible actions defined in Article 3 of the Regulation to include preventative action intended to minimise the damaging effects of an ongoing or imminent disaster.

Action outstanding: determining the acceptability of the request submitted by the Spanish authorities and proposal for amendment of the Structural Fund Regulation, or failing that, proposal for the creation of a specific instrument.

Lead bodies: Member State concerned (additional information) - Commission (assessment and proposal).

3.6. Research into new technologies

In the sixth Framework Programme for Research, Technological Development and Demonstration, environmental impact research is already included under the priority "Global Change and Ecosystems".

As of 2003, the work programme will cover links between society, the economy, biodiversity and habitats as well as mitigation and restoration

⁸ Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund.

strategies. For 2004, it will enable the development of models to measure the impact of environmental pollution on water and marine ecosystems.

Action outstanding: proposal to include in the 2004 work programme new research activities involving work on shipwrecks containing contaminants (Priority "Sustainable Surface Transport") and to expand the concept of vehicle life cycle to include work on wrecks in the event of an accident (currently only the maintenance and inspection of surface transport vehicles are covered).

Lead body: Commission.⁹

3.7. Pilot projects and other actions

In his letter of 17 January 2003, President Prodi mentioned the possibility of undertaking other short- and medium-term Community action to support the efforts of the Member States concerned, such as pilot projects or specific actions. A specific legal basis need not be adopted before undertaking pilot projects. However, they can only be entered in the budget for a maximum of two budget years and the total amount, including all headings and areas of assistance, may not exceed EUR 32 million annually.

The Commission will also promote initiatives¹⁰ to improve innovation and research in the shipbuilding and ship repair sector, as well as higher environmental and safety standards.

Action outstanding: pilot projects in this area may be proposed by a European institution (Commission, European Parliament, Council).

3.8. Anti-pollution measures and restoration of the environment

3.8.1. Environmental impact assessment

Under the cooperation system set up for this purpose, and endowed with rather limited budgetary resources, the Commission plans to contribute EUR 300 000 towards assessing and monitoring the environmental impact of this oil spill.

Action outstanding: submission of a proposal and request for cofinancing.

Lead body: the Member State concerned.

3.8.2. Repair and compensation of environmental damage

By June 2003 the Commission will undertake an assessment to determine whether current legislative and policy instruments, in particular those dealing

⁹ The inclusion of the proposed areas is still subject to the approval of the programme committees, and the projects funded must be selected on the basis of evaluations in the context of calls for proposals.

¹⁰ Such as Leadership 2015, for example.

with the environment, health, research, fisheries and regional development, should be adapted in order to minimise the risk of recurrence and the damage (immediate or long-term) associated with such accidents. In particular, considering that the international system does not currently provide for adequate compensation for environmental damage, other measures may prove necessary in connection with ecological damage.

On 23 January 2002, the Commission adopted a proposal for a Directive on compensation for environmental damage if an accident is not covered by an international convention in force in the Member States concerned.¹¹

Action outstanding: to launch the review of legislative and political instruments in the context of the strategy to protect and conserve the marine environment.¹²

Lead body: Commission.

Approval of a proposal for a Directive on compensation for environmental damage if an accident is not covered by an international convention in force in the Member States concerned.

Lead bodies: European Parliament and Council.

3.8.3. *Pooling anti-pollution resources and exchanging experience*

In line with the conclusions of the Environment Council of 9 December 2002, the Commission has worked on establishing a network for exchanging experience in the field of oil pollution. The network currently being set up will make national experts available to other Member States in order to improve local skills, compare different anti-pollution techniques used, study the approaches adopted in the emergency services or other competent bodies.

Action outstanding: approval of a Decision to ensure funding of this experience exchange network (March-April 2003).

Lead body: Commission (March-April 2003).

4. CONCLUSION

This report demonstrates the determination of the European Commission, in cooperation with the Member States, to enlist all possible financial and technical resources to assist the victims of the Prestige disaster.

The Commission also plans to provide the European Union with the mechanisms needed to prevent such accidents in future by means of appropriate regulation and vigilant international action.

¹¹ COM(2002) 17 of 23.01.2002.

¹² COM(2002) 539 of 02.10.2002.

In these legislative and administrative proposals, it will strive to pursue an overall strategy of prevention, reparation and sanction with regard to the operators concerned.