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Press and Information

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Judgment of the Court of Justice in Case C-188/07

Commune de Mesquer v Total France SA, Total International Ltd

THE ‘POLLUTER PAYS’ PRINCIPLE REQUIRES FINANCIAL LIABILITY TO BE IMPOSED FOR THE COST OF DISPOSING OF WASTE CAUSED BY THE SINKING OF AN OIL TANKER

The requirement to transpose Article 15 of the Waste Directive correctly may mean that the cost of disposing of the waste caused by the accidental spillage of hydrocarbons at sea is to be borne by the producer of the product from which the waste came.

The Italian company ENEL concluded a contract with Total International Ltd for the supply of heavy fuel oil from Dunkirk (France) to Milazzo (Italy). To carry out the contract, Total raffinage distribution, now Total France SA, sold the heavy fuel oil to Total International Ltd, which chartered the oil tanker Erika, flying the Maltese flag. On 12 December 1999 the Erika sank off the coast of Brittany (Finistère, France), spilling part of her cargo and oil from her bunkers into the sea and causing pollution of the Atlantic coastline of France.

The municipality of Mesquer brought proceedings against the companies in the Total group for reimbursement of the cost of cleaning and anti-pollution operations on its coastal territory, relying on the Waste Directive. The municipality claimed that the hydrocarbons accidentally spilled at sea constituted waste within the meaning of the directive, so that the companies Total International Ltd and Total France should be liable for the cost of disposal, in their capacity as ‘previous holders’ or ‘producer of the product from which the waste came’ respectively.

In order to give judgment in the appeal before it, the Cour de cassation (France) has put questions to the Court of Justice on the interpretation of the applicable provisions of Community law.¹

- *Whether heavy fuel oil accidentally spilled at sea following a shipwreck must be classified as waste within the meaning of the directive:*

The Court considers that the heavy fuel oil carried by the ship is not ‘waste’, as it is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without requiring prior processing.

¹ Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32).

However, such hydrocarbons spilled in connection with a shipwreck, mixed with water and sediment and drifting along the coastline of a Member State until being washed up on shore, **must be regarded as substances which their holder did not intend to produce and which he discards, albeit involuntarily, while they are being transported, so that they must be classified as waste within the meaning of the directive.**

- *Whether, in the event of the sinking of an oil tanker, the producer of the heavy fuel oil spilled at sea and/or the seller of that oil and charterer of the ship carrying it may be required to bear the cost of disposing of the waste thus produced, even though the substance spilled at sea was being transported by a third party, in this case a maritime carrier:*

The Court recalls to begin with that, in the circumstances of this case, the Waste Directive provides, in accordance with the ‘polluter pays’ principle, that that cost must be borne by the ‘previous holders’ or the ‘producer of the product from which the waste came’.

The Court observes that, in the event of a shipwreck, the owner of the ship carrying hydrocarbons has them in his possession immediately before they become waste. **In those circumstances, the shipowner may be regarded as having produced the waste and on that basis be classified as a ‘holder’ within the meaning of the directive.**

However, the national court may, in the light of factors which it alone is in a position to assess, consider that **the seller of hydrocarbons and charterer of the ship carrying them has ‘produced’ waste if it finds that the seller-charterer contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he failed to take measures to prevent such an occurrence, such as measures concerning the choice of ship.**

The Court considers in this respect that the Waste Directive does not preclude the Member States from providing, pursuant to the Liability Convention² and the Fund Convention,³ for limitations or exemptions of liability for the benefit of the shipowner and the charterer, or from establishing a fund such as the International Oil Pollution Compensation Fund.

If, however, the cost of disposing of the waste is not or cannot be borne by that fund and, in accordance with the limitations and/or exemptions of liability laid down, the national law of a Member State, including the law derived from international agreements, prevents that cost from being borne by the shipowner and the charterer, even though they are to be regarded as ‘holders’, such a **national law will then have to make provision for that cost to be borne by the ‘producer of the product from which the waste came’.** In accordance with the ‘polluter pays’ principle, however, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur.

² International Convention on Civil Liability for Oil Pollution Damage adopted at Brussels on 29 November 1969, as amended by the Protocol signed in London on 27 November 1992 (OJ 2004 L 78, p. 32).

³ International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage adopted at Brussels on 18 December 1971, as amended by the Protocol signed in London on 27 November 1992 (OJ 2004 L 78, p. 40).

Unofficial document for media use, not binding on the Court of Justice.

Languages available: BG CS DE EL EN ES FR HU IT NL PT RO

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-188/07>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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