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Press and Information

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Advocate General Kokott's Opinion in Case C-188/07

Commune de Mesquer v Total France SA and Total International Ltd

IN THE VIEW OF ADVOCATE GENERAL KOKOTT THE "POLLUTER-PAYS" PRINCIPLE IN EC WASTE LAW CAN JUSTIFY LIABILITY FOR POLLUTION DAMAGE CAUSED BY A HEAVY FUEL OIL DISCHARGE

However, it is also compatible with the polluter-pays principle to exclude from liability for oil pollution damage those who did not cause that pollution either intentionally or recklessly

The Breton Commune of Mesquer has brought an action against the Total Group seeking repayment of the costs it incurred in respect of the operation which it had to undertake to clean its beaches of the oil resulting from the sinking of the tanker 'Erika' in 1999.

In order to be able to give a ruling on the conditions of liability under European Community waste law, the French Cour de Cassation made a reference to the Court of Justice for an interpretation of the relevant provisions.¹

The referring court seeks to determine whether discharged heavy fuel oil discharge falls within the meaning of waste for the purposes of Community law and whether those involved in producing, selling or carrying the heavy fuel oil, without actually transporting it, are also liable for disposing of the pollution damage caused.

In today's Opinion Advocate General Juliane Kokott comes, first, to the conclusion that **heavy fuel oil** is to be treated as **waste for the purposes of Community law if it is discharged in a tanker accident and is mixed with water and sediment**.

In accordance with the Waste Framework Directive, the financial burden of the disposal operations should be on the persons who cause the waste, whether they are holders or former holders of the waste or even producers of the product from which the waste came.

If **responsibility for costs on the part of the Total companies** were to be assessed **solely on the basis of the Waste Framework Directive**, as the producer of heavy fuel oil and/or the seller and carrier they would have to be ordered to bear the cost of disposing of the oil waste following

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

the tanker accident **in so far as they can be accused of contributing personally to causing the leak of the heavy fuel oil.**

However, French law might preclude liability on the part of the Total companies. In that respect, Advocate General Kokott analyses the effects that the international agreements binding on France have on liability under the EC Waste Directive.

The Advocate General points out that the international Liability Convention ² precludes any claim for compensation in France against anyone other than the owner of the ship, unless the damage was caused intentionally or recklessly. That exclusion from liability is a permissible way of making full use of the scope granted to the Member States in relation to the implementation of the polluter-pays principle.

In addition, she finds it compatible with the polluter-pays principle that the liability of both the ship's owner and the International Fund for Compensation for Oil Pollution Damage ³ is limited. It is justified to apportion to the general public a causal contribution for oil accidents and some of the risk, since the Contracting States to that convention – which include almost all of the EU Member States – permit risky maritime oil transportation and accept the risk of having to bear further costs. If oil damage exceeds the limits of the liability of the ship's owner and of the Fund, the costs cannot really be afforded by private funds.

In the light of the above, Advocate General Kokott comes to the conclusion that it is **compatible with the polluter-pays principle to limit the liability of the producer of heavy fuel oil and/or the seller and carrier in accordance with the Liability Convention and the Fund Convention.**

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

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

Languages available: DE, EL, EN, IT, FR

The full text of the Opinion 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 of delivery.

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² International Convention of 29 November 1969 on Civil Liability for Oil Pollution Damage.

³ International Convention of 18 December 1971 on the Establishment of an International Fund for Compensation for Oil Pollution Damage.