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Judgment of the Court of Justice in Case C-308/06

Intertanko and Others v Secretary of State for Transport

**THE DIRECTIVE ON SHIP-SOURCE POLLUTION WHICH PROVIDES FOR
PENALTIES IN THE EVENT, IN PARTICULAR, OF ACCIDENTAL DISCHARGES
REMAINS VALID**

The validity of certain provisions of the directive, which lays down a regime governing liability for accidental discharges, cannot be assessed in the light of either the United Nations Convention on the Law of the Sea or the Marpol Convention

Organisations representing substantial proportions of the maritime shipping sector brought an action before the High Court of Justice of England and Wales regarding the implementation in the United Kingdom of the directive on ship-source pollution and the introduction of penalties for infringements¹.

In their view, two provisions of the directive do not comply in several respects with two international treaties: the United Nations Convention on the Law of the Sea and the International Convention for the Prevention of Pollution from Ships (the Marpol Convention), which define the conditions under which coastal States may exercise sovereign rights in the various marine zones. According to the organisations, those provisions of the directive establish a stricter liability regime for accidental discharges.

The national court requested the Court of Justice to rule on whether the provisions of the directive are compatible with the two international treaties.

In its judgment delivered today, the Court has concluded that the validity of the directive cannot be assessed in the light of either the Marpol Convention or the Convention on the Law of the Sea.

First, the Court noted that the Community institutions are bound by international agreements concluded by the Community and that international treaties therefore have primacy over secondary Community legislation. Consequently, the validity of, inter alia, a directive may be affected by a failure to comply with international rules.

¹ Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 (OJ 2005 L 255, p. 11).

The Court then set out the conditions under which it may review the validity of a Community provision in the light of an international treaty. First, the Community must be bound by the treaty and, second, examination by the Court of the provision's validity must not be precluded in particular by the treaty's nature and broad logic.

After recalling these rules, the Court analysed both international treaties in detail.

With regard to the Marpol Convention, the Court observed that the Community is not a party to this Convention. The mere fact that the directive incorporates certain rules set out in it is not sufficient to enable the Court to review the directive's legality in the light of the Convention.

With regard to the Convention on the Law of the Sea, the Court observed that this Convention has been signed by the Community and approved by a Community decision, thereby binding the Community. However, the Convention does not establish rules intended to apply directly and immediately to individuals. It does not confer upon them rights and freedoms capable of being relied upon against States, irrespective of the attitude of the ship's flag State.

Consequently, the nature and broad logic of the Convention on the Law of the Sea prevent the Court from being able to assess the validity of a Community measure in the light of that Convention.

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

Languages available: CS, DE, EL, EN, ES, FR, HU, IT, PL, PT, RO, SK, SL

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-308/06>

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

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