

## **Industry loses first round in EU pollution legal battle**

Justin Stares - Wednesday 21 November 2007

A coalition of maritime industries has lost the first round of a legal battle to overturn the European Union ship-source pollution directive.

An advocate general of the European Court of Justice ruled on Tuesday that there was no ground for questioning the validity of what industry referred to as the "criminalisation" directive because of its harsh definition of seafarer liability.

While not definitive, the ruling is a blow for the coalition, led by tanker owners' association Intertanko, because the full court usually follows the advocate general's advice.

Intertanko, dry cargo shipowners' group Intercargo, the Greek Shipping Co-operation Committee, Lloyd's Register and the International Salvage Union were hoping the court would declare the directive invalid on the grounds that it contravened international law, in particular the Law of the Sea.

But in her 37-page ruling, advocate general Juliane Kokott said there was "no factor of such a kind as to bring into question the validity of Directive 2005/35/EC of the European Parliament and of the Council of September 7, 2005 on ship-source pollution and on the introduction of penalties for infringements".

The full court follows the advocate general's advice in around 80% of cases.

The directive, which is already law throughout the 27 EU member states despite the legal challenge, opens the door to criminal sanctions including imprisonment following accidental pollution.

It breaks away from the Marpol convention definition of liability based on "recklessness" and "intent to cause damage" and introduces the concept of "serious negligence", thereby allegedly hindering innocent passage.

Industries, supported by unions and maritime-friendly governments such as Greece and Malta, argue the law will discourage sea careers.

But other governments, in particular France, want to impose tighter penalties to help prevent a repeat of notorious oil spills such as the Erika and the Prestige. The European commission argues that the directive will prevent miscarriages of justice.

Advocate general Kokott dismissed claims the EU institutions were bound by the Marpol convention. The community "merely" has observer status at the International Maritime Organization, she pointed out.

National governments are also allowed to impose penalties following discharges by vessels on the high seas, she said: "The directive 2005/35 infringes neither Marpol nor the Convention on the Law of the Sea by making persons other than the master and the owner liable for discharges."

Intertanko managing director Peter Swift commented: "These proceedings have been brought to uphold the principles of legal certainty and of the shipping industry being regulated on a global basis. They have been brought to ensure the fair treatment of seafarers and others engaged in the shipping industry. We await the judgment of the court."

- EU ambassadors are expected to make progress towards the adoption of a separate law designed to extend the provisions of the Athens convention on passenger liability from international to national or cabotage

trades when they meet today in Brussels.

They are, however, expected to reaffirm their desire not to see the law extended to inland waterways.

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