

EC in pole position

TradeWinds 22 Nov 07

The European Commission is en route to victory in the long-running dispute over a European directive on ship-source pollution, a leading expert says.

Erik Rosaeg, a professor at the Scandinavian Institute of Maritime Law, believes the European Court is likely to back the opinion of advocate general, Juliane Kokott, who said this week there was nothing wrong with the directive.

Rosaeg believes Kokott's findings are "very significant", however, he stops short of saying her statement is a major turning point as he "always felt the Commission had a good case".



He tells TradeWinds: "There is not much doubt in the advocate general's opinion. It is likely that the court will follow it."

An Intertanko-led coalition, which includes Intercargo, the Greek Shipping Co-operation Committee, the International Salvage Union and Lloyd's Register, argues the much-criticised directive works against international law.

Kokott released a 37-page document earlier this week which said there was "no factor that could bring into question the validity" of the directive.

Her findings are non-binding, with the final decision in the case not expected until next year. However, even if the coalition is unsuccessful in its bid to overturn the directive, Rosaeg feels it could still gain some positive results from the case.

"It is unlikely the court will find that the directive is illegal," he says. "However, I do think when it comes to the final decision Intertanko could gain some benefits from having raised this issue."

It is possible the result of the court will follow the advocate general's findings and restrict the term "serious negligence" so not all kinds of negligence are included, he explains.

"I think that was a major concern of Intertanko," Rosaeg says. "I don't know if they will get their money's worth from the case, but they could get some benefit, perhaps."

Intertanko released a statement earlier this week dismissing suggestions that Kokott's statement was some form of victory for the European Commission.

"This opinion examines the arguments presented by the parties and makes a series of recommendations as to how the complex issues raised in the case might be addressed," Intertanko says.

The tanker owners' association also drew on the fact Kokott appears to support the coalition's argument that the EU had no power to enforce laws outside of its territorial waters if they go beyond the reach of Marpol.

"These proceedings have been brought to uphold the principle of the shipping industry being regulated on a global basis with regulations that are legally certain and capable of uniform application," says Intertanko managing director, Peter Swift.

By [Andy Pierce](#) in London

published: 17:54 GMT, 22 November 2007 | last updated: 17:57 GMT, 22 November 2007