

Total liable

Total, the French oil company, can be held liable for the costs of cleaning up the Erika oil spill if it contributed to the risk, the European Union's (EU) top court has ruled.

Total has previously argued it cannot be held responsible as the charterer, claiming certificates masking the tanker's "severe deterioration" had misled it.



The European Court Justice (ECJ) today says the French courts can hold Total liable under the EU's Waste Directive if they find the company failed to take preventative measures including the choice of ship.

In January a French court found Total partly responsible for the loss of the Malta-flag, 37,000-dwt Erika (built 1975) in December 1999 and

the loss of 20,000 tonnes of heavy fuel oil and ordered it to pay EUR 192m (\$298.62m) compensation, a decision the company said it would appeal while still paying the amount in full.

The Paris criminal court held the oil company jointly liable along with Italian classification society Rina, Giuseppe Savarese as the ship's owner and Antonio Pollara of Panship as the technical manager.

Total had already spent EUR 200m on cleaning up Brittany beaches, disposing of the collected melange of oil, sand and other material and pumping out oil left in the sunken tanker.

Separately, the French Supreme Court considered a EUR 70,000 compensation claim from the community of Mesquer in Brittany, but referred the case to the ECJ.

The ECJ rules that heavy fuel oil, once mixed with seawater and sediment, is waste and, under the directive's "polluter pays" principle, the producer or "previous holder" of the waste is liable.

Total had sold the heavy fuel to Enel of Italy and chartered the Erika to carry it from its Dunkirk refinery.

The ECJ says the shipowner is the producer of the waste and can be classified as the "holder", but adds that courts may consider that "the seller of the hydrocarbons and charterer of the ship carrying them has produced waste if it finds that the seller-charter contributed to the risk that the pollution caused by the shipwreck would occur, particularly if he failed to take measures&such as concerning the choice of ship."

Where clean-up costs are not covered by international conventions, the ECJ says member states can use national laws to make the producer of the waste pay if he has contributed to the risk "by his conduct".

Total said the French court's verdict in January would force users of ships to become inspectors, "potentially weakening the responsibility of those who have the expertise, duty and actual power to inspect tankers, especially their structures."

The company added, "This confusion of responsibilities could eventually make shipping less safe."

By [Andrew Guest](#) in London

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