EU Directive on Criminal Sanctions in respect of Ship Source Pollution

The Advocate General’s opinion and European Court of Justice (ECJ) judgment relating to the EU Directive on Ship Source Pollution (2005/35/EC) and the EU Framework Decision (2005/667/JHA) respectively were discussed in an earlier website article EU Ship Source Pollution Legislation - Developments.

The ECJ recently issued a decision in which it ruled that the validity of the Directive cannot be assessed by reference to MARPOL, as the EU itself (unlike its member States) is not a party to MARPOL and is therefore not bound by the Convention. Moreover, in its view there is nothing in the Directive, and in particular the term “serious negligence”, that is in conflict with the general principle of legal certainty under EU law. Accordingly, this EU Directive will remain in force, albeit subject to the interpretation provided by the Advocate General. The coalition, comprising INTERTANKO and others in the shipping industry, which instituted proceedings is currently considering its position in the light of the ruling.

At the same time, the European Commission applied successfully to the ECJ to annul the Framework Decision, arguing that it was adopted on the wrong legal basis. As a consequence the European Commission has issued a new Ship-Sourced Pollution Directive, amending the existing Directive in order to strengthen the obligation on Member States to introduce criminal penalties for ship-source pollution committed either intentionally or as a result of gross negligence. In line with the ECJ ruling that it was not within Community competence, the new text will not set common levels of sanctions. However, implementation of the new text will require Member States to introduce “effective, dissuasive and proportionate” criminal sanctions against offenders.