

Brussels Commentary

EU Maritime Transport Law

Jessen / Werner

C.H.BECK · Hart · Nomos

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Brussels Commentary on EU Maritime Transport Law

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edited by

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Preface

The law of the European Union (EU) is now a major source of law in almost all regulatory areas. In the 21st century, maritime law – in particular the regulation of shipping – makes no exception anymore. Over the decades and largely driven by both the jurisprudence of the Court of Justice of the EU and the dynamic regulatory reaction to some disastrous shipping accidents in EU waters, EU maritime law has emerged to become an integral part of the EU's internal market. This area of law has hardened and deepened to cover various aspects of competition law and transport law in general as well as various maritime-related safety and security issues. This development has occurred despite the important position of the International Maritime Organisation (IMO) as the world's primary regulator for – in the words of the IMO itself – “*safe, secure and efficient shipping on clean oceans*”.

Though being a member of the United Nations Convention on the Law of the Sea (UNCLOS) the EU is still not a member of the IMO in its own rights. However, all EU member States are active members and participants in all IMO matters. Their individual position as sovereign IMO members is carefully coordinated in Brussels – under active leadership of the European Commission – mostly resulting in a common policy position of the “EU block” at the IMO in London. There are even some recent examples of IMO legal acts being identified as incompatible with EU law, thus resulting in new legal conflicts between those two regulators. Generally, EU maritime law now covers a wide array of both public law and even private law aspects of shipping as well. It is inextricably interlinked with the work of the IMO and, ultimately, both regulators cannot globally succeed without the other. Even the EU's regional rules for the regulation of international shipping affect the rest of the world, for example, by introducing stricter regional environmental standards to be adhered to both by EU-flagged vessels and non-EU flags when entering EU waters and, in particular, EU ports.

The rise of EU maritime law as a separate source of law is also the result of shipping being one of the key factors for economic growth and prosperity throughout Europe's history. About half of the EU's population lives less than 50 km from the sea. Waterborne freight transport has proved to be a vital instrument for the development of the EU's trade whether national, intra-EU or external. Today, the maritime industry is an important source of revenues and jobs in Europe. But there are also dangers and risks inherent to maritime transport. The EU's reliance on maritime transport means that it is as surrounded and penetrated by the risk of pollution from shipping, both chronic and catastrophic, as it is by the sea itself. The words of the European Commission are both true in a positive and in a negative way: “*Maritime transport has a direct impact on the quality of life of citizens.*” As a result, the EU has the strongest interests in

- promoting safe, secure and efficient intra-European and international shipping on clean oceans and seas,
- assuring the long-term competitiveness of European shipping and related maritime industries in world markets, and
- assisting the entire seaborne transport system to adapt to the challenges of the 21st century.

This Commentary strives to be a reference work for everyone seeking to know more about how EU 21st century maritime law affects commercial practices and even the rights of consumers (for example as passengers of vessels) and everyone else (for example via the prescription of strict environmental standards for shipping). We have chosen to divide the book into five chapters, acknowledging that not every regulatory area of maritime law and not every single legal act can be analysed as intensely and as detailed as the provisions of a single comprehensive convention could be commented on. Thus, Chapter 1 introduces the overall regulatory framework for maritime transport in the EU. Above all, Chapter 1 serves as a legal and historic foundation for all following specific chapters. It also includes some information on issues like infrastructure, system development and integration, including port policy, and the EU's maritime-related external relations, which are cross-cutting topics not addressed specifically elsewhere in the Commentary. Furthermore, Chapter 1 also contains a separate summary on the regulation of inland waterway transport in the EU. As stated in Chapter 1, it is possible to break down the maritime policy of the EU into some core areas, most importantly

- seafarers' recruitment, training and working conditions,
- market access and conditions for offering maritime transport services,
- maritime safety and pollution control;
- maritime security.

This list of leading topics governs the following structure of the Commentary: At the outset, Chapter 2 addresses further cross-cutting issues which – under the current status of EU law and international law – are difficult to comment on via sole reference to specific statutes and provisions. Still in a “non-commentary style”, this chapter addresses the general role of EU regulatory activity for carriage of goods by sea contracts as well as conflict of laws and jurisdictional issues in the maritime context. The final topic of Chapter 2 – cross-cutting questions of EU law and international maritime labour law – is also directly interlinked with possible conflicts of laws.

After that, Chapter 3 discusses the most important EU legal instruments to create a liberalised and competitive market in maritime services, arguably the most important and most traditional challenge related to intra-EU matters. Two of the six sub-chapters in Chapter 3 also address the difficult modern issue of passenger rights, generally when travelling by sea and on inland waterways and particularly, in the event of accidents possibly triggering certain liability claims.

Arguably, Chapter 4 (adding up to not less than 14 sub-chapters) forms both the heart and backbone of this Brussels Commentary. It is centred on the ever-

growing subject of the protection of the marine environment and the related acts of EU maritime safety law. The majority of the sub-chapters of Chapter 4 comment on EU Regulations and Directives which are part of the so-called “*Erika packages*”, a series of legislative acts adopted in the aftermath of the “*Erika*” oil tanker casualty which occurred in 1999 off the coast of France. Another maritime disaster in EU waters, the break-up of the oil tanker “*Prestige*” in late 2002, has fuelled the follow-up dynamics of the “*Erika packages*” even more. Six of the 14 sub-chapters are directly linked to the “*Erika III package*”, the latest (2005-2009) and most important “wave” of EU legislative activity in this field.

In an effort to also address one of the latest legislative acts within the context of Chapter 4, a basic commentary on the EU’s new Regulation on the monitoring, reporting and verification (MRV) of carbon dioxide emissions from shipping and its future practical implications concludes the discussion of the various environmentally-related sub-areas. Some critical readers might miss an individual commentary on the legislative acts paving the way for the most important establishment of the Lisbon-situated European Maritime Safety Agency (EMSA) in 2002. However, the EMSA and its continuously widening tasks – especially in support of the European Commission in monitoring the implementation of all legal acts discussed in Chapter 4 – are addressed in the various specific *rationae materiae* of almost all other sub-chapters. In sum, it seemed appropriate to us to refrain from commenting on the intra-EU provisions on the configuration and finance of the EMSA itself.

Chapter 5 concludes the Commentary by addressing the globally important challenges of security, in particular in relation to maritime transport and port infrastructure. This represents a topic which has gained the most practical prominence in the aftermath of the terrorist attacks of 11 September 2001.

Reviewing all specific regulatory topics addressed and all sub-chapters chosen for inclusion in the Commentary, there would still be a list of possible further themes and acts. Some of them are cross-cutting with other subject-matters like, e.g., waste management, as addressed by the relevant EU Regulation on ship-recycling, adopted in 2013 and implemented over the next years. Nevertheless, we think that the choice of topics and the relevant EU legal acts commented on is brought down to a sound and round figure. Additionally, the professional qualities of all authors involved should make the Commentary an essential reading to students, researchers, academics and practitioners. It is the result of arduous work involving many setbacks and shifted deadlines. However, in the end, this new Commentary shall still contribute to making a partly impenetrable, protracted and dynamic area of law more accessible to readers throughout the whole world.

Henning Jessen
Hamburg, December 2015

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Abbreviations

AFS	Anti-Fouling System
AIS	Automatic Identification System
Art.	Article
BGB	Bürgerliches Gesetzbuch (Germany)
BGBI	Bundesgesetzblatt
BGH	Bundesgerichtshof (Germany)
BIMCO	Baltic and International Maritime Council
CAS	Condition Assessment Scheme (for oil tankers)
CC	Civil Code
CCNR	Central Commission for the Navigation of the Rhine
CESNI	Comité Européen pour l'Élaboration de Standards dans le Domaine de Navigation Intérieure
cf.	Confer
CFR	Cost and Freight (INCOTERMS)
Chap.	Chapter
CIF	Cost, insurance, freight (INCOTERM)
CIP	Carriage and insurance paid to (INCOTERM)
Cir.	Circuit
CJEU	Court of Justice of the European Union
CMI	Comité Maritime International
Co.	Company
CO2	Carbon Dioxide
COGSA	Carriage of Goods by Sea Act
COSS	Committee on Safe Seas and the Prevention of Pollution from Ships
CPT	Carriage paid to (INCOTERM)
DAP	Delivered at place (INCOTERM)
DAT	Delivered at terminal (INCOTERM)
DEQ	Delivered ex quay (INCOTERM)
DES	Delivered ex ship (INCOTERM)
DOC	Document of Compliance
e.g.	for example
EC	European Communities
ECR	European Court Report
ECSA	European Community Shipowners' Associations
Ed(s)	Editor(s)
EDI	Electronic Data Interchange
edn	Edition
EEA	European Environment Agency
EEC	European Economic Community
EEDI	Energy Efficiency Design Index
EEOI	Energy Efficiency Operational Indicator
EEZ	Exclusive Economic Zone
ELAA	European Liner Affairs Association
ELR	European Law Review
EMEC	European Marine Equipment Council
EMSA	European Maritime Safety Agency
ENI	European Vessel Identification Number
EP	European Parliament
Et al	and others
Et seq.	and the following
Etc.	Etcetera

Abbreviations

ETS	Emissions Trading Scheme
EU	European Union
European J. Law & Econ.	European Journal of Law and Economics
FS	Festschrift
FSI	Flag State Implementation
GHG	Greenhouse Gas
GPS	Global Positioning System
Hague Rules (HR)	International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1924
Hague-Visby Rules (HVR)	International Convention for the Unification of Certain Rules of Law relating to Bills of Lading 1968
Hamburg Rules	United Nations Convention on the Carriage of Goods by Sea 1982
HGB	Handelsgesetzbuch (Commercial Code, Germany)
HSSC	Harmonized System of Surveys and Certification
i.e.	that is
i.r.o.	in respect of
i.t.o.	in terms of
IACS	International Association of Classification Societies
ICC	International Chamber of Commerce
ICCLR	International Company and Commercial Law Review
ICJ	International Court of Justice
ICLQ	International & Comparative Law Quarterly
ICS	International Chamber of Shipping
Id.	the same person
ILO	International Labour Organization
IHR	Internationales Handelsrecht, Zeitschrift für das Recht des internationalen Warenkaufs- und -vertriebs
IMO	International Maritime Organization
Inc.	Incorporated
INCOTERMS	International Commercial Terms of the ICC (revised in 2010)
INTERCARGO	International Association of Dry Cargo Shipowners
INTERTANKO	Independent Tanker Owners Association
IOPC Fund	International Oil Pollution Compensation Fund
ISF	International Shipping Federation
ISM Code	International Safety Management Code
ISPS Code	International Ship and Port Facility Security Code
ITF	International Transportworkers' Federation
ITOPF	International Tanker Owners Pollution Federation
ITLOS	International Tribunal for the Law of the Sea
IUMI	International Union of Marine Insurance
LMAA	London Maritime Arbitrators' Association
LLMC	Convention on Limitation of Liability for Maritime Claims
LNG	Liquid Natural Gas
Ltd.	Limited
MARPOL 73/78	International Convention for the Prevention of Pollution from Ships 1973/1978, as amended
MBM	Market-based measures
MEPC	Marine Environment Protection Committee (IMO)
MLC 2006	Maritime Labour Convention 2006
MoU	Memorandum of Understanding
MRV	Monitoring, Reporting, Verification
MSC	Maritime Safety Committee (IMO)
n	Note
NAIADES	Integrated European Action Programme for Inland Waterway Transport

Abbreviations

New York Convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958
NJW	Neue Juristische Wochenschrift
No.	Number
NOX	Nitrogen oxides
NVOCC	Non-Vessel Operating Common Carrier
OLG	Oberlandesgericht
OUP	Oxford University Press
p.(p)	Page(s)
Para(s)	Paragraph(s)
Paris MoU	Paris Memorandum of Understanding on Port State Control
PC	Privy Council
P&I Clubs	Protection and Indemnity Clubs
PSC	Port State Control
PSJ	Port State Jurisdiction
Pub	Publication
QACE	Quality Assessment and Certification Entity
Reg	Regulation
RIS	River Information System
Ros	Recognized Organizations
Rome I	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations
Rome II	Regulation (EC) No 864/2007 regarding the conflict of laws
Ro-Ro	Roll on Roll off
Rotterdam Rules	UN Convention on Contracts for The International Carriage of Goods Wholly or Partly by Sea 2008
Sched	Schedule
Sect.	Section
Sent.	Sentence
SDR	Special drawing right
SECA	Sulphur emission control area
SEEMP	Ship Energy Efficiency Management Plan
SMC	Safety Management Certificate
SMS	Safety Management System
SOLAS	International Convention on the Safety of Life at Sea, 1974 (as amended)
SOX	Sulphur oxides
STCW Convention	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (as amended)
Supp.	Supplement
TEU	Twenty-foot equivalent units
TFEU	Treaty on the Functioning of the European Union
U.S.C.	United States Code
UCC	Uniform Commercial Code (US)
UCC Rep Serv.	Uniform Commercial Code Reporting Service
UCP 600	Uniform Customs and Practice
UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea, 1982
UNCTAD	United Nations Conference on Trade and Development

Abbreviations

UNFCCC	United Nation Framework Convention on Climate Change
US	United States of America
USD	United States Dollar
USDC	United States District Court
v	versus
VAT	Value Added Tax
VLCC	Very Large Crude Carrier
Vol.	Volume
VUWLR	Victoria University of Wellington Law Review
WCS	World Council of Shipping
W.D.	Western District
WL	West Law, Database
WLR	The Weekly Law Reports
WTO	World Trade Organization