



**UNION OF GREEK SHIOWNERS
FOUNDED IN 1916**

MEMO 383/2016

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EU

1. Criminalization of seafarers

The European Social Partners in Maritime Transport (ETF / ECSA) are extremely concerned about the recent Spanish Court decision in the “Prestige” case (2002) as it unexpectedly overturned the judgment by the Provincial Court of La Coruña (Galicia) which had yet cleared both the Master, Captain Apostolos Mangouras and the Chief Engineer of criminal responsibility.

Judges have now convicted Captain Mangouras of gross negligence for his decisions during the voyage and his actions as events unfolded. This decision is a further proof of the criminalization of seafarers that began at the time of accident and which, in the case of Captain Mangouras, has continued for a period of fourteen years of judicial harassment. The Social Partners cannot accept that seafarers should have to pay such a heavy price whilst the Maritime Authority, who had been exempted from any liability, ordered the vessel away from any port of refuge, with well-known catastrophic effects upon the environment. It is beyond dispute that seafarers are often used as easy scapegoats upon whom to shift all the responsibility for possible environmental damages, and unfairly sued - sometimes in flagrant breach of their fundamental rights. The Social Partners fear that such a ruling will impact negatively on the attractiveness of a seafaring career and, hence, on the future recruitment of young competent seafarers.



ICS strongly criticized the “Prestige” judgment by the Spanish Supreme Court. According to it “The Supreme Court’s decision was extremely surprising in that it overturned a lower court’s acquittal of the Master, in his absence, and without hearing any new evidence as to his knowledge about the condition of the ship. This raises fundamental questions as to whether it was a fair trial.” The decision seems entirely unbalanced, applying different standards when assessing the blameworthiness of the Master to those applied to government officials on shore, whose decisions were exonerated by the Supreme Court.” ICS says that the actions by the Spanish government to pursue its claims against the shipowner, for what are expected to be enormous amounts in excess of the shipowner’s limits of liability, could seriously undermine the system of shared liability that has been agreed under the CLC/Fund liability and compensation regime. ICS now fears that that the entire system of efficient compensation for oil spills could be put in serious jeopardy because of unsound decisions being made by national courts. The UGS fully supported and prompted relevant action of ECSA / ICS to the EU authorities regarding the repercussions of the above issue.

2. Emerging sustainable recycling in India

Ship recycling practices in Alang, India, are gradually improving. The European Commission should acknowledge this positive development under the EU Ship Recycling Regulation. Adopting an overly restrictive approach will discourage first movers and further delay the entry into force of the IMO Hong Kong Convention. These are the main messages that ECSA took home from a fact-finding visit in Alang (29-30/4/2016). The visit was organized in cooperation with the Indian government, the Gujarat Maritime Board and the Ship Recycling Industry Association (SRIA) of India. The delegation visiting the yards included representatives from ECSA, EU Member States, the European Commission (DG Environment) and ICS. The main purpose of the ECSA visit was to assess to what extent operations in intertidal zones can be sustainable and, thus, be potentially compliant with the provisions of the EU Ship Recycling Regulation. According to ECSA Secretary General P. Verhoeven, “the implementation of standards differs considerably, but an increasing number of yards have clearly taken the responsible path towards full compliance with the Hong Kong Convention. As the Convention has not entered into force yet, we have encouraged these yards to apply for recognition under the EU Ship Recycling Regulation. In turn, we urge the Commission to assess these applications in the true spirit of the Regulation and the Convention.”

3. EU / Environmental Liability Directive – European Commission Report and Refit Evaluation

The European Commission’s report on the application of the Environmental Liability Directive (ELD) has been published along with an evaluation of the Directive’s fitness for purpose. From the shipping industry’s perspective, the report and evaluation are generally positive in that the Commission proposes to maintain the



exceptions for environmental damage from shipping incidents that are covered by the IMO liability and compensation Conventions. The Commission is also concerned about the slow uptake of the HNS Convention and considers that “the possibility of its deletion from the list of IMO Conventions in Annex IV should be further examined, unless clear evidence of the EU Member States’ joint commitment to conclude this international Convention arises”. The report / evaluation and an “Action Plan” will be presented at an ELD Stakeholder Conference in Brussels in May 2016. ECSA / ICS and the International Group of P&I Clubs have been working to ensure that environmental damage from shipping incidents continues to be covered by the international Conventions and not by the ELD. Efforts have been based on a briefing note supported by BIMCO / Intertanko. The coverage of environmental damage under the ELD and the international Conventions is different because the two regimes have different objectives. However, this has not proved to be problematic in practice and the industry strongly believes that the compensation provided under the international Conventions for environmental damage is reasonable.

The Commission’s concerns that the HNS Convention has not yet entered into force are shared by the shipping industry, which is campaigning for its widespread ratification. A concerted effort is underway, under the auspices of IMO, to bring the 2010 HNS Convention into force. In Europe, the discussions on a Council Decision authorising EU Member States to ratify the 2010 HNSC are ongoing. ECSA / ICS / BIMCO have written to the EU decision makers underlining the importance of a uniform global regime for HNS damage and the need to support EU Member States ratification of the 2010 HNS Convention.

4. Port Reception Facilities / Interpretative Guidelines and Commission Evaluation Report

On 31/3/2016 the European Commission adopted the Interpretative Guidelines and an Evaluation Report for the Directive 2000/59/EC on port reception facilities for ship generated waste and cargo residues (the "PRF Directive").

The Guidelines cover the adequacy of port reception facilities, the development and monitoring of the waste reception and handling plans, the implementation and enforcement of the mandatory delivery of ship-generated waste, as well as the application of exemptions. The Guidelines provide the basis for the Technical Recommendations for the application of the PRF Directive, which have been prepared by the European Maritime Safety Agency (EMSA) and will soon be sent to all relevant stakeholders for consultation (including the participants of the European Sustainable Shipping Forum PRF subgroup). Both the Guidelines and the EMSA recommendations are “soft law” measures, ie. are seen as short/medium term solutions and all issues will be further addressed in the Impact Assessment of the PRF Directive.



The Guidelines cover many of the areas highlighted by ECSA within the framework of the ESSF PRF subgroup. Some of these areas are: (1) the mandatory elements and consultation during and after the development of the Waste Reception and Handling Plans prepared by the ports, as well as the evaluation of the plans and the possibility of reporting inadequacies, (2) the need to ensure that the advance waste notification is aligned in all EU ports and that electronic reporting is taking place through the National Single Windows, (3) clarifications on important aspects for granting exceptions such as the need to determine the dedicated storage capacity as well as for exemptions by defining the terms “scheduled”, “regular”, “frequent” and explanation of the exemption procedure, (4) the establishment of an appropriate information and monitoring system which will be achieved by the creation of a special PRF module in the THETIS system.

Some of the aspects that are not covered by the Guidelines expected to be addressed in the EMSA technical recommendations are: the vessel substitution situations and/or delays/cancellations in the short sea trades sector which need to be taken into account in the exemption regime as well as exemptions for short sea ships operating on the spot.

5. Arctic Policy Communication

On 27/4/2016 the European Commission adopted an EU policy Communication for the Arctic region. This Communication provides an update of the two previous EU Arctic policies (2008, 2012). The Communication, a ‘soft law’ instrument, is built on three pillars: climate change and environment, sustainable development and international cooperation. The elements that touch upon shipping are: Arctic research, search and rescue response and infrastructure, including satellite communication which can improve safety of navigation. One of ECSA’s key messages (to which the UGS subscribes) is that follow-up actions should only be taken after consultation with the Arctic States but also that the EU should avoid creating parallel fora for discussion but rather use the Arctic Council and IMO for this purpose. In a meeting of ECSA with the European Commission, the EU officials explained that the EU does not intend to come up with any type of legislation affecting the Arctic because there is no EU competence on this issue. The Communication has been submitted to the European Parliament and Council for consultation.

6. Virtual Centre of Offshore Safety Expertise

A new EC Virtual Centre of Offshore Safety Expertise (ViCOS) will be set by the European Commission to give the opportunity to the Competent Authorities of the Member States monitoring the implementation of the Directive 2013/30 on safety of offshore oil and gas operations (hereafter ‘OSD’) to search for experts on technical and regulatory aspects related to the OSD. The Competent Authorities established the EU Offshore Authorities group (EUOAG), under the European Commission



supervision, after the adoption of the OSD to exchange experience and expertise related to the application of its provisions. This database is expected to provide assistance to the EUOAG group. To enter into the ViCOS, please note that you have to complete one of the available forms and send it out to JRC-EUOAG-TECH-SECRETARIAT@ec.europa.eu. There are in total three different forms (accessible in the EUOAG group site <http://euoag.jrc.ec.europa.eu/node/113>):

1. one dedicated to Competent Authorities, organizations and companies;
2. one for individual experts employed by the organizations above;
3. one for individual unaffiliated experts.

As trade associations, ECSA and the National Shipowners' Associations should complete form 1. The same goes for offshore companies whose activities fall under the scope of the OSD. Individual experts of companies/organizations that are in ViCOS, should also enter the database by completing form 2. Offshore partners are also advised to act along the same lines. The European Commission has informed that ViCOS will be operative by the end of 2016. For this reason, a prompt reply has been invited.

Various Issues

1. EFTA / Port Labour Issues in Norwegian ports

On 19/4/2016 the European Free Trade Association (EFTA) Court judged that the monopoly of Norwegian dock workers is incompatible with European Economic Area (EEA) rules on free competition and free movement. The EFTA Court applies the same fundamental Treaty principles as the European Court of Justice (ECJ) and its judgments have a very high authority within the EU. The EFTA judgment adopts the same reading of the freedom of establishment regarding closed dock workers pools as the ECJ did when it condemned the Spanish dock labour system to be in breach of this fundamental EU Treaty principle (judgment 11/12/2014). With this judgment, the EFTA Court provides an answer to a question referred to it by the Norwegian Supreme Court in the so called *Holship Norge AS v Norsk Transportarbeiderforbund case*. The case concerned a notification of a boycott by the Norwegian Transport Workers' Union directed at Holship in order to force Holship to make use for the unloading and loading operations by dockworkers employed by the Administration Office for Dock Work in the port of Drammen. The EFTA Court judged:

- The exemption of collective agreements from EEA competition rules does not cover a clause whereby a port user is obliged to give priority to another company's workers over its own employees or the use of a boycott in order to procure acceptance of the collective agreement containing that clause.
- A boycott that aims at procuring acceptance of a collective agreement which includes a priority clause such as the one at issue constitutes a restriction on the freedom of establishment. This restriction cannot be justified on grounds of public policy, public security or public health or overriding reasons of general interest, such as the protection of workers, as the system protects a limited group of workers to the detriment of other workers.



While not bound by it, the Supreme Court of Norway will have to take this judgment into account when taking its decision on the case. The parties have the possibility to appeal this decision at the EFTA Court. The Norwegian trade unions remain very combatant and strongly oppose the EFTA judgment, referring to ILO law and earlier judgments at lower court level.

2. China and Taiwan / Direct trade

Following queries regarding the status of trade between China and Taiwan, the UK P&I Club has provided the following information, together with a list of ports approved between the straits for direct trade:

[Bulletin 1087 - 03/16 - Direct Trade between China and Taiwan](#)

The relevant regulations can be found herebelow:

<http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=K0070045>

<http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=K0070064>

Nevertheless, in case a vessel sails directly between China and Taiwan, the Club strongly suggests that the shipping agent's advice be sought in advance.

ATTACHMENT