

EU regulation on ship recycling

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1. Key elements of the EU Regulation No. 1257/2013 on Ship Recycling

The European Regulation No. 1257/2013 on Ship Recycling (the SRR), having already entered into force in Dec 2016, regulates the safe and environmentally sound recycling of EU flagged ships but also expanding to cover non-EU flagged ships of their last voyage from EU waters:

- The EU SRR will require, from 31/12/2020, non-EU flagged ships that visit EU ports to have an Inventory of Hazardous Materials (IHM). Any non-EU flagged ships having a last voyage that either starts from an EU port, or transits through an EU port, will continue to be regulated by Europe through the Waste Shipment Regulation (and not the EU SRR).
- From 31 December 2018-the “date of application” of the regulation, EU-flagged vessels will have to be scrapped at facilities on an EU approved list.
- In general, the EU SRR specifies that the ships flying EU flag at the end of their lifespan can only be sent for recycling at EU approved recycling yards, and non-EU flagged end-of-life ships departing or transiting EU ports will continue to be subject to the Waste Shipment Regulation of the EU, which prohibits their recycling outside OECD countries. Therefore, non EU flagged ships will not have the choice of going to any non OECD recycling facilities that may be listed in the EU list of approved yards (unless they change flag to an EU flag).
- At present there are only 21 European facilities, none of which are involved in the regular scrapping of large commercial vessels. There are none from third countries. Ref webpage <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1525765784626&uri=CELEX:32018D0684>, updated on 4 May 2018. The 21 shipyards included in the List are Located in Belgium, Denmark, France, Latvia, Lithuania, the Netherlands, Poland, Spain and the UK, all in the EU.

Direct impact would include much more complexity and higher time and costs spent to conclude any deals. There would also be potential consequences where the parties have not considered carefully to make the “place”, “flag”, “port of last voyage” and “time” out of the coverage of the EU legislation. An owner could be surprised if their ship is sold with the time/place/flag not right.

2. Legal cases

There were widely reported legal cases involving two companies “Seatrade” (2018) and “Zodia maritime” (2017), and another one “Eide Carrier” (2017).

A. The case of “Seatrade” (2018) - first criminal prosecution of a shipowner

Four reefer ships of the Dutch company “Seatrade” were exported in 2012 from Hamburg and Rotterdam with final destinations in Turkey, India and Bangladesh. Emails were found indicating intention to have the ships demolished at the time of export. They became evidence of violation of the European Waste Shipment Regulation No. 1013/2006:

- Prohibition of shipment of “hazardous waste” from European ports to Non-OECD countries;
- 12 months suspension of each Directors of the company, plus fine of euro750,000.
- It shows the critical element of “last voyage” of ships from EU ports. The definition of “last voyage” could be tricky. It may also be critically important about where and when a ship changes her flag before travelling to a recycling yard. It could be sensitive if it happens in European waters and just before her “last voyage”.

CONSEQUENCE: The directors of the owner were found to have breached existing EU regulations by indirectly selling ships to scrap yards in non-OECD countries and also for having sent ships for recycling without having completed the necessary paperwork for the prior informed consent for the one vessel that “Seatrade” had been sent to turkey (OECD country) for recycling.

B. The case of “Zodia maritime” (2017)

One worker was injured in Bangladeshi yard in Apr 2015 during the breaking process. It was claimed breach of duty of care owed by the ship manager:

- the injured worker demanded compensation from a ship owner directly;
- According to lawyers, Zodiac...should have known how dangerous the Chittagong breaking yards were when the vessel was sold for scrap to Rayna Investments;
- they (Zodiac) had a duty not to sell vessels to Bangladesh shipyards via their contractors or cash buyers;
- due to the incident location, it is the law of Bangladesh which applies to this case;
- settlement reached ...

C. The case of “Eide Carrier”

In addition to the cases above, there was another important case, the “Eide Carrier” being pursued by the Norwegian authorities that are investigating also the role of the insurer giving cover for the last voyage from Norway to south Asia. (refer to <http://www.shipbreakingplatform.org/press-release-controversial-tide-carrier-under-arrest-in-norway/>)

3. Other legal frameworks related to time/place/flag

Before the entry into force of the EU Regulation on Ship Recycling on 30 Dec 2018, there are existing legal requirements as follows:

- A. European Waste Shipment Regulation No. 1013/2006: this Regulation enforces, unilaterally in EU, the Ban Amendment to the Basel Convention, adopted in 1995 – the ban of export of hazardous waste from OECD to non-OECD countries – it is not yet in force internationally but implemented in EU. Under Regulation No. 1013/2006:
 - No ship, regardless of her flag, leaving in EU ports destined for recycling may be exported to a non-OECD country for that purpose.
 - Also, no ship, regardless of her flag, leaving an EU port destined for recycling may be exported to an OECD country for that purpose WITHOUT HAVING FIRST OBTAINED THE IMPORTING COUNTRY’S PRIOR INFORMED CONSENT.

- B. European Regulation No. 1257/2013 on Ship Recycling applies to:
 - European flagged ships;
 - European flagged ships to be recycled only in yards on list of EU approved yards;
 - Its implementation will commence on 31st Dec 2018.

Currently, any ship (whatever the flag) departing European waters for recycling is regulated by the European Waste Shipment Regulation (No 1013/2006). After 31 December 2018, the Waste Shipment Regulation will continue to apply to any non-EU flag ship departing from European Union ports for recycling.

C. Basel Convention

- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, better known as the Basel Convention, was adopted in 1989, entered into force in 1992 and currently has been ratified by 186 countries (out of a possible 195).

- The Basel Convention provides controls for the international movement of hazardous wastes and such controls are implemented through the establishment of a chain of communications between the authorities of the country exporting the hazardous wastes and the authorities of the importing country, with the involvement of the authorities of any transit state. The Convention relies on the “prior informed consent” of the authorities of the importing country, which might agree to the shipment of a certain hazardous waste, on the basis that the waste will be treated in an environmentally sound manner by the importing country.

- In order to strengthen protection to developing countries further, in 1995, parties to the Basel Convention adopted the “Ban Amendment”, banning the export of all hazardous wastes from OECD to non-OECD countries. At the end of the 1990s, UNEP decided that the Basel Convention should also regulate the recycling of ships, notwithstanding that the Basel Convention does not make any provision specifically for ships, or recycling yards and safety issues, or for the concept of “flag state”.

- ✓ The Ban Amendment has not yet entered into force internationally although it appears that this might happen within the next year or two.
- ✓ European Union decided it would not wait for the amendment to come into force and the Ban Amendment has been effectively enforced unilaterally since 2006 in the EU.

4. Commercially and economically unworkable regulation

Voices from various channels indicated concerns and viewed the EU regulation “commercially and economically unworkable”.

The current European List of approved recycling yards only includes ones in Europe, reported with a combined capacity of just over 300,000 LDT which is insufficient to handle all EU flagged ships destined for recycling. As a result, the EU is now under certain pressure from shipowners to approve and include non EU yards (and yards in Asia) in order to increase the practical capacity and ensure that the EU Ship Recycling Regulation is workable.

Shipowners are faced with issues such as:

- Whether the EU regulators would consider there is (intentionally or not) misleading declaration about a ship’s true intended destination when leaving European waters for recycling and re-examine potentially the process years later on how the decision to recycle was made before the ship left Europe. Shipowners can expect regulators (and environmental NGOs) to study lists of ships arriving at breaking yards in Asia to determine whether owners would have been subject to those regulations.
- EU flagged ships may reflag outside Europe to avoid the EU Ship Recycling Regulation and the ship is recycled in a yard outside the EU shortly afterwards, but from 2019 the regulators could look into that decision making process to determine if the change in registration was to avoid the obligation under the EU regulation.

There are voices from all circles of shipping about problems ahead, but few with real practice reported and experiences shared. Members are invited to report and share your experiences.

Ref:

IC1875-2 - No delay of entry into force of the EU Ship Recycling Regulation No. 1257/2013, 7 Aug 2018

IC1875-1 - Ship Recycling and EU Regulation No. 1257/2013, 23 Jul 2018

IC1872 - Ship recycling and legal cases, 12 Apr 2018

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