



## SHIP RECYCLING – KEY REGULATIONS AND RISK FACTORS

### 1. Introduction

There is an ever-increasing focus on legal issues regarding ship recycling. Many owners, internationally, still choose to sell vessels for recycling at substandard yards, where the price for a large vessel can be several million USD higher than if the recycling is done in a responsible way at a quality yard.

Recycling regulations are a complex area of law and the consequences of violations can be severe. Companies may incur criminal fines. Directors and/or Officers may not only be fined but could also face prison sentences for violating these rules.

This newsletter provides a brief overview of the main regulations that apply to ship recycling. Key questions to consider are the flag and the location of the vessel as the answers will determine what

regulations apply. The main regulations to be familiar with are the EU rules and the Basel Convention but there are also national rules including those that implement these regulations. Generally, these rules regulate the export of “waste”, which includes ships bound

for recycling. The EU/EEA rules also regulate the recycling of any vessel with an EU/EEA flag. When reading the below, keep in mind that many jurisdictions will have internal rules regulating the export of waste or ship recycling as well.

Nordisk has a Ship Recycling Team of six lawyers that are at your service to answer any questions regarding ship recycling. We are working with, amongst others, the Norwegian Shipowners Association for further responsible ship recycling. One aspect of which is the development of standard clauses for responsible ship recycling, and ESG policies. We are at your service!

### 2. The EU Ship Recycling Regulation

The EU Ship Recycling Regulation and its EEA equivalent (“SRR”) entered into force in part in 2013, and in full, from 2019.

The SRR applies to vessels flying the flag of an EU or EEA state. The location of the vessel when the decision is made to recycle it, is irrelevant under the SRR.

Pursuant to the SRR, a vessel flying the flag of an EU or EEA member state may only be recycled



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at certain pre-approved recycling yards. None of the yards in the three major recycling countries of India, Pakistan or Bangladesh have so far been approved, meaning that recycling has to take place in either Europe or at Aliaga in Turkey. Several recycling yards in India have done a lot of work to increase their standards to a level equal to that of Aliaga and are now in various stages of the application process with the EU. However, to date, no yards in India, Pakistan or Bangladesh have received EU approval.

In addition, each vessel must have onboard an Inventory of Hazardous Materials (IHM) showing an overview of the various possible hazardous substances contained on the vessel.

The key criteria to decide if the SRR is applicable is therefore the flag of the Vessel at the time it is sold for recycling. A concern for authorities is that ship-owners might avoid the SRR by simply changing the flag on their ageing vessels to a non-EU/EEA state before selling them for recycling. The SRR would then no longer be applicable.

### **3. The EU Waste Shipment Regulation**

The Waste Shipment Regulation and the EEA equivalent (the “WSR”) entered into force in 2006. The WSR implements the terms of the Basel Convention and the so-called “OECD Decision” (see below).

The WSR is not specific to shipping. It covers all shipment, import and export of waste in the EU/EEA area. A vessel destined for recycling is regarded as “waste” under the WSR. The WSR makes it illegal to export waste without having the required export license in place. Export licenses may only be given for export from EU countries or to countries covered by the OECD Decision. Export of the vessel to any non-OECD countries, such as India, Pakistan and/or Bangladesh, is a violation of the WSR.

A question for ships is whether it becomes “waste” when the shipowner has started thinking about recycling it, or when it is actually sold for recycling.

In the *Seatrade* case in the Netherlands, the Rotterdam district court held in 2018 that it was sufficient that the idea had been formed and that some preparatory actions had been undertaken. The company and

some of its employees were therefore sentenced for the illegal export of waste in violation of the WSR, even though the vessels in question were only sold for recycling when they subsequently reached the non-OECD destination. The vessels had even carried cargo on the way there from Germany and the Netherlands. The decision has been appealed.

If a vessel is “waste” and is exported to a non-OECD country like Pakistan or India, it is not a valid defence that the actual recycling is then done in a responsible manner. Thus, when a vessel is to be recycled, it is crucial to consider carefully whether it has been within the jurisdiction of an EU/EEA country at a point in time when it could be regarded as “waste” pursuant to the WSR.

### **4. Basel Convention**

The Basel Convention is an international convention on cross border waste shipments, which has been ratified by 186 states. It does not apply if the SRR or the WSR applies. Its applicability should, therefore, always be considered in that situation.

As with the WSR, the Basel Convention imposes restrictions on the export of waste. The Convention obliges anyone exporting waste from a Convention country to obtain an export license prior to the export of the waste. Thus, if a vessel is in a port in country “A” and is to be recycled in country “B”, one is obliged to obtain an export permit from country “A”. However, it is often difficult to apply to ships, since they may for example, be in international waters when the idea to recycle them arises. In such event the vessel might not be “exported” from any country.

The Basel Convention operates as a set of minimum stipulations, and there is no guarantee that a specific jurisdiction has not imposed tougher regulations. Whether it applies and what the effects are must be assessed on a case by case basis, depending on the jurisdiction.

### **5. The Hong Kong Convention**

The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the “HKC”) is often talked about, but differs from the above mentioned regulations as it is not yet in force.

While it is not legally binding, it is often used



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as a benchmark for shipowners when defining their recycling policies and as a yardstick for responsible recycling where the SRR and WSR do not apply.

Once it enters into force, the HKC will apply to vessels flying the flag of a ratifying state and will impose restrictions on where recycling can take place. A vessel flying the flag of a ratifying state may only be recycled at a HKC pre-approved yard. In addition, each vessel must have onboard an Inventory of Hazardous Materials (IHM) showing an overview of the various possible hazardous substances that are found onboard the vessel.

#### 6. Summary and Conclusion

The regulations on ship recycling are complex and subject to change. Parts are untested by the courts, but with the increasing scrutiny of NGOs and authorities we expect this area of law to be developed further with time. The risks associated with non-compliance of the SRR and WSR, in particular, may be severe.

Nordisk has extensive experience advising shipowners on issues related to ship recycling. We remain ready to assist members to ensure recycling is done responsibly and to avoid the potential pitfalls.



Photos courtesy of Norwegian Shipowners' Association