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Executive Overview

Introduction

Shipping and related maritime activities are an intrinsically global industry. Increasingly, several nations may be represented and involved in the logistical operation of trade involving a single product from the point of manufacture to the end customer. The extensive nature of maritime activities means that many regulatory instruments and legal principles apply and affect the industries involved.

The maritime sector is regulated by a number of entities and the interaction between the national, European and international institutions is a complex subject area. This study provides an overview of the pertinent legal issues affecting the maritime sector in the European Union.

Objectives

The aim of this study is to illustrate the interaction between international and European institutions and their respective powers in implementing legislative instruments in the maritime sector. This study will provide information on a representative sample of international conventions of the International Maritime Organisation (IMO) and also relevant EU (European Union) regulations and directives pertaining to maritime transport and regulation enforcement. The terms EU and EC (European Community) are used interchangeably and are both denoted to signify principles of law pertaining to the Member States of the European Union.

This study analyses the most relevant legislative instruments across a number of subject themes including; Carriage of Goods and Insurance Law, Employment Law, Competition Law, Taxation Law, Environmental Law and Navigation Law. These themes represent key topics of research relevant to stakeholders. The current study illustrates the up-to-date position of the law in each subject area chosen.

The objective of this study is to provide the foundation for further research which will enable greater analysis for future policy initiatives. This study provides an indication of the most relevant legal instruments affecting maritime issues at the present time. This study will provide the information required make to the SKEMA knowledge base a useful reference point for stakeholders interested in accessing information on regulatory aspects pertaining to maritime and intermodal transport. This study lists and provides links to existing web sources that comprehensively publish and maintain the legislation, regulations and case-law in each of the subject themes.

This study is not intended as a comprehensive analysis of all regulatory matters and does not purport to analyse the effects or proposed amendments of such legal instruments. A detailed policy review of the legislators' intentions in relation to the legal instruments utilised is beyond the scope of this study. A detailed analytical approach to the impact and effect of the legislation through its implementation in the EU and in individual Member States may be consulted through Sub-Tasks 1-4.

The Sub-Tasks, which may be accessed through the SKEMA knowledge platform website, comprise an in-depth study of the following areas:

SE1.6.1 “Evolution of European Competition Policy Regulations for the Maritime Sector”

SE1.6.2 “Review of ‘monitoring’ Directive 2002/59/EC and associated initiatives”

SE1.6.3 “Interaction of international and national legislation for shipping safety and security”

SE1.6.4 “National variations on legal issues regarding trade, logistics and intermodal transport”.

This study should be read in conjunction with the foregoing Sub-Tasks for a more comprehensive analysis of the relevant topics.

Target Stakeholders

This is a substantial study of the most relevant themes affecting the maritime transport and logistics sector in Europe. As such, this study will be a crucial foundation for regulatory matters and will be consulted by a broad range of stakeholders including:

- European, national and international authorities and agencies engaged in formulating regulatory policies in the maritime transport sector;
- Port and terminal management and stevedoring companies;
- Maritime and intermodal transport operators including: Ship operators, haulage operators, forwarders and shipping agencies;
- Maritime colleges, institutes and companies involved in education of professionals, including Continuous Professional Development (CPD), relating to maritime and intermodal transport.;
- Maritime legal practices and law practitioners working in the area of maritime and intermodal transport.

Approach

A number of topics were identified as particularly relevant to the investigation of maritime and intermodal transport, namely:

- Carriage of Goods and Insurance Law;
- Employment Law;
- Competition Law;
- Taxation Law;
- Environmental Law;
- Navigation Law.

The topics were evaluated and the current status of applicable legislation was investigated. Each section contains an introductory explanation of the subject matter as an overview to the material covered by that section. This is followed by more detailed analysis of international and European regulations. IMO Conventions are highly influential and are the basis for the operation of much of the legislation in this area. The applicable European legislation is also investigated throughout each subject theme. Where possible, the implementation of international and European legislation in a national context has been illustrated using Ireland as an example.

As this study is conducted as a statement of the law as it currently exists, each section may be consulted independently. Conclusions are not inferred as this study does not purport to evaluate the policy measures underlying the legislative instruments discussed. The study does not analyse case law or judgments, nor does it provide a critique on objections to any of the legal measures in place or proposals for future amendments. As mentioned previously, the related Sub-Tasks provide a more comprehensive analysis of specific topics and these should be consulted in conjunction with this study.

The Appendices provide web links for each of the sections to enable the user to obtain further more detailed information on current legislation, case law and policy affecting the particular subject theme.

A number of the most relevant European and international entities have been listed in Appendix 1 (A).

Appendix 1 (B-G) contain internet links to the legislative sources for each of the subject areas listed above.

Appendix 2 contains a list of abbreviations and their explanation for terminology referenced throughout the study.

Appendix 3 contains a Glossary of Terms relating to the Competition Law section given the specific nature of this area of law. A more detailed analysis may be consulted in Sub-Task SE1.6.1 “Evolution of European Competition Policy Regulations for the Maritime Sector”.

Key Areas

The following topics were considered representative of the most important issues affecting stakeholders in the maritime industry:

- Carriage of Goods and Insurance Law – this section provides analysis of issues such as the Hague-Visby, Hamburg and Rotterdam Rules, Electronic Bills of Lading, Sea Waybills in the context of the carriage of goods. In relation to insurance matters, an illustrative account of Hull and Machinery and Cargo insurance is provided together with investigation of General Average, the York-Antwerp Rules and Protection & Indemnity Clubs.

- Employment Law – this section details pertinent issues of employment regulations as they affect seafarers. The areas covered include: working time, training certification and watchkeeping, recognition of qualifications, security and accident prevention in the context of European and international legislation through the International Labour Office. Analysis of the upcoming Maritime Labour Convention is also provided. The influence of Port State Control and State Aid for employment in the maritime sector is also discussed.
- Competition Law – this section deals with the implications of Articles 81-89 of the European Community Treaty. This section also examines the effect of the removal of block exemptions with regard to liner conferences. A brief analysis of US Anti-Trust law is also included. Due to the specific nature of the terminology involved, a detailed glossary is provided for ease of reference in Appendix 3.
- Taxation Law – this section examines the use of double taxation treaties between different countries. This section also deals with the concept of direct and indirect taxation and tonnage tax.
- Environmental Law – this section discusses the UNCLOS agreement and its implementation in a European context. Specific instruments are examined including the Wild Birds and Habitats Directives. This section also contains a brief overview of regional conventions which affect European waters in the Baltic, Mediterranean and North Atlantic.
- Navigation Law – Navigation law investigates the relevant instruments affecting the safe operation of ships and the implications of international conventions on safety, training and equipment including the SOLAS, STCW, SUA, FAL, SAR, COLREG, Load Lines, Tonnage and Salvage Conventions. This section also provides further information on Port State Control.

2.1.1 Contracts of Carriage & Marine Insurance

A. International Law

Introduction

The transportation of cargo from one country to another is still largely affected by means of marine transport despite the growth in air, rail and road transportation. A contract for the carriage of goods by sea is normally evidenced by a bill of lading between the carrier and the consignee/buyer. The terms of the bill of lading determine the rights and liabilities of the parties to the contract. As bills of lading are by their very nature made between parties in different countries, extensive international rules have developed in this area. The international conventions and guidelines of greatest significance in this area are as follows:

- The Hague – Visby Rules;
- The Hamburg Rules;
- CMI – Rules of Electronic Bills of Lading;
- CMI – Uniform Rules for Sea Waybills; and
- The Rotterdam Rules.

The Hague-Visby Rules

Introduction

The Hague-Visby Rules originated as the Hague Rules but due to the rapid change in technologies and the way business was being carried out, it was found that the rules were lacking in several areas. Consequently, the rules were revisited and the revised rules became known as The Hague Visby Rules. In brief, it can be said that the Hague-Visby Rules seek to impose minimum responsibilities and liabilities on the carrier. The Hague-Visby Rules have been adopted by most of the worlds' shipping nations and so the majority of bills of lading issued today will be subject to these rules.

Applicability of the Hague-Visby Rules

The applicability of the Hague-Visby Rules to a contract of carriage depends on three factors:

1. the nature of the document dealing with the contract of carriage;
2. the nature of the cargo; and
3. the nature of the carriage.

- The nature of the document dealing with the contract of carriage

The Hague-Visby Rules come into operation where the contract of carriage is dealt with by a bill of lading or a similar document of title.

- The nature of the cargo

The Hague-Visby Rules are applicable to all goods, wares, merchandise and articles of every kind with the exception of live animals and cargo.

- The nature of the carriage

The Hague-Visby Rules are applicable to all bills of lading where the carriage is between ports of two different states if:

- The bill of lading is issued in a contracting state; or
- The carriage is from a port in a contracting state; or
- the contract contained in or evidenced by the bill of lading details that the Hague-Visby Rules or legislation of any State giving effect to them are to govern the contract.

Carrier's Responsibilities

Under the Hague-Visby Rules, a carrier includes the owner or charterer who enters into a contract of carriage with the shipper. The carrier has numerous responsibilities; the following is a selection of those responsibilities:

1. Before and at the beginning of a voyage, the carrier is obliged to exercise due diligence to:
 - make the ship seaworthy;
 - properly man, equip and supply the ship; and
 - make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. The carrier must properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.
3. The carrier, "on demand" by the shipper, must issue a bill of lading. This bill of lading must include details of
 - the leading marks necessary for identification of the goods ;
 - the number of packages or pieces, or the quantity, or weight; and
 - the apparent order and condition of the goods.
4. The carrier is obliged to proceed on the contract voyage, deviation from which is only permissible in certain stated circumstances as detailed in the rules.

Carrier's Defences

Under the Hague-Visby Rules, the carrier is protected from Liability by a long list of exceptions. The following are a few of such exceptions:

- Loss or damage sustained as a result of unseaworthiness exempts the carrier from liability so long as it can be established that he has exercised due diligence to make the ship seaworthy;
- Loss or damage sustained as a result of the act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or management of the ship exempts the carrier from liability;
- Loss or damage sustained as a result of fire, unless caused by the actual fault or where privity of the carrier's contract exempts the carrier from liability;

- Loss or damage sustained as a result of perils, dangers and accidents of the sea or other navigable waters exempts the carrier from liability ;
- Loss or damage sustained as a result of act of God, act of war or an act of public enemies exempts the carrier from liability;
- Loss or damage sustained as a result of arrest or restraint of princes, rulers or people, or seizure under legal process exempts the carrier from liability;
- Loss or damage sustained as a result of quarantine restrictions exempts the carrier from liability;
- Loss or damage sustained as a result of act or omission of the shipper or owner of the goods, his agent or representative exempts the carrier from liability;
- Loss or damage sustained as a result of strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general exempts the carrier from liability ;
- Loss or damage sustained as a result of riots and civil commotions exempts the carrier from liability;
- Loss or damage sustained as a result of saving or attempting to save life or property at sea exempts the carrier from liability; and
- Loss or damage sustained as a result of wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.

Shippers Duties and Immunities

The shipper is deemed to have guaranteed to the carrier, accuracy at the time of shipment, of the marks, number, quantity and weight as furnished by him. The shipper must indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such information.

In the event that a carrier, without knowledge of an inflammable, explosive or dangerous nature of the cargo he is carrying, becomes so aware, he may at any time before discharge, land the cargo at any place or destroy it or render it innocuous. The carrier can do this without incurring the cost of compensating the shipper. In fact, the shipper will be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

The shipper will not be responsible for the loss or damage that is sustained by the carrier without the act, fault or neglect of the shipper his agents or servant.

Calculation of liabilities

The amount of liability which is payable is calculated by reference to the package, unit or weight of the cargo. It is the choice of the shipper as to which of these three is used, generally the choice is based on which will yield the highest amount for them.

The monetary unit used to calculate the liability is the SDR – the special drawing right which is defined in the International Monetary Fund. The limitation amounts detailed in the Hague-Visby Rules are 666.67 Units of account per package or unit or 2 units of account per kilo of the gross weight of the goods lost or damaged whichever is the higher.

Time limits

Pursuant to the Hague-Visby Rules, the carrier and the ship are discharged from all liability in respect of the cargo unless proceedings are instituted against them within one year of the delivery of the cargo or within one year of the date on which they would have been delivered.

Hamburg Rules

Introduction

The Hague- Visby Rules began to come under attack in the late sixties due to several defects in their application. As a result, UNCITRAL (United Nations Commission on International Trade Law) was assigned with the duty of updating the Hague- Visby Rules to take account of the defects which had become so apparent. The result was the Hamburg Rules. Unfortunately, to date the number of contracting nations stands at 26 and so it can be said that the rules have not had the effect that was initially hoped for. The reasoning for the low numbers is said to be due to the increase in liability for the carriers and the associated insurance costs as a result of the adoption of the rules. The Hamburg Rules are however in use and it is necessary to consider their provisions as they apply.

The Applicability of the Rules

The Hamburg Rules come into operation where there is a contract of carriage between two different States in the following circumstances:

- the port of loading as provided for in the contract of carriage by sea is located in a contracting state, or
- the port of discharge as provided for in the contract of carriage by sea is located in a contracting state, or
- one of the optional ports of discharge provided for in the contract of carriage by sea is the actual port of discharge and such port is located in a contracting state, or
- the bill of lading or other document evidencing the contract of carriage by sea is issued in a contracting state, or
- the bill of lading or other document evidencing the contract of carriage by sea provides that the provisions of this Convention or the legislation of any State giving effect to them are to govern the contract.

Carrier's and their Responsibilities

The Hamburg Rules provide two definitions in respect of a carrier, they are "carrier" and "actual carrier".

- A carrier is defined as "any person by whom or in whose name a contract of carriage of goods at sea is concluded with any shipper".
- An "Actual Carrier" is "any person to whom the performance of the carriage of goods or of part of the carriage has been entrusted by the carrier and includes any other person to whom such performance has been entrusted".

A carrier is responsible for the goods at the port of loading, during the carriage and at the port of discharge. When the carrier/actual carrier takes charge of the goods, he must "on demand" by the shipper issue a bill of lading to the shipper.

Carrier's Liability and Defences

Unlike the Hague-Visby Rules, the Hamburg Rules detail few if any defences to liability. Article 5 of the Rules states that a "carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge as defined in Article 4, unless the carrier proves that he, his servants or agents took all measures that could reasonably be required to avoid the occurrence and its consequences".

In addition to this clause, the Hamburg Rules state that the carrier is liable:

- (i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents;
- (ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents, in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

Shipper's Responsibilities

The Hamburg Rules state that "the shipper is deemed to have guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity as furnished by him for insertion in the bill of lading". In addition, the shipper must indemnify the carrier against any loss which may arise from such inaccuracies.

In the event that a shipment is to contain dangerous goods, the shipper must inform the carrier/actual carrier of this fact and any special treatment which must be given to these dangerous goods. In addition, the shipper is also required to mark or label the goods and the bill of lading must be updated to include the details of the dangerous goods.

Calculation of Liabilities

Liability under the Hamburg Rules is calculated by reference to the package or shipping unit. The liability amounts in the Hamburg Rules are much greater than those set out in the Hague-Visby Rules; however, the unit of amount is still the SDR. The carrier's liability is limited to an amount equivalent to 835 units per package or other shipping unit or 2.5 units per kilogram of gross weight of the goods lost or damaged, whichever is the greatest.

Time Limits

The Hamburg Rules provide for a two year limitation period for commencing proceedings in respect of the carriage of goods.

CMI Rules for Electronic Bills of Lading

Introduction

Since the introduction of the Hague-Visby Rules and the Hamburg Rules, the use of electronic documents has risen greatly. As both sets of rules do not deal expressly with this area, the Comité Maritime International ("CMI") introduced Rules for Electronic Bills of Lading which are to be incorporated into the bill of lading in order to be effective. The following is a brief note on the CMI Rules.

The Rules

1. As soon as a carrier is in receipt of goods from the shipper, he must send a receipt message to the shipper detailing :
 - a. the name of the shipper;
 - b. the goods in question;
 - c. the date and place of the receipt;
 - d. a reference to the terms of the carriage; and
 - e. a "Private Key" to be used.

The Private Key is defined in the Rules as "any technically appropriate form, such as a combination of numbers and/or letters, which the parties may agree for securing the authenticity and integrity of a transmission".

2. The receipt must be updated with details of date and place of shipment as soon as the goods have been loaded.

Once this has happened the receipt "shall have the same force and effect as if the receipt message were contained in a paper bill of lading.

3. As soon as the shipper confirms receipt of this message he becomes the holder. The holder is the only party who may, as against the carrier:
 - b. claim delivery of the goods;
 - c. nominate the consignee or substitute a nominated consignee for any other party, including itself;
 - d. transfer the right of control and transfer to another party;

- e. instruct the carrier on any other subject concerning the goods, in accordance with the terms and conditions of the contract of carriage, as if he were the holder of a paper bill of lading.
- The carrier will notify the holder of the place and date of intended delivery of the goods. When the holder receives this notification, he must nominate a consignee and give the carrier delivery instructions with verification by the Private Key. Should the holder fail to nominate a consignee they will be deemed to be the consignee.
- The carrier will deliver the goods to the consignee upon production of proper identification in accordance with the delivery instructions detailed above. Such delivery shall automatically cancel the Private Key.
- The carrier will not be liable for “mis-delivery” if he can prove that he exercised reasonable care to ascertain that the party who claimed to be the consignee was in fact that party.

CMI Uniform Rules for Sea Waybills

Introduction

CMI introduced the Uniform Rules for Sea Waybills to apply to contracts of carriage which are not dealt with in a bill of lading or a similar document of title regardless of whether or not the contract is in writing. In this regard, the rules state that the contract of carriage will be subject to any international convention or national law which is, or if the contract of carriage had been covered by a bill of lading or similar document of title would have been, compulsorily applicable. Such convention or law shall apply notwithstanding anything inconsistent with this in the contract of carriage. The following is a brief note on these rules.

Obligations of the Carrier

The carrier must deliver the goods to the consignee upon production of proper identification.

The carrier will be under no liability for wrong delivery if he can prove that he has exercised reasonable care to ascertain that the party claiming to be the consignee is in fact that party.

Obligations of the Shipper

The shipper warrants the accuracy of the details of the goods and indemnifies the carrier against any loss, damage or expense resulting from any inaccuracy.

The shipper is the only party entitled to give the carrier instructions in relation to the contract of carriage. However, the shipper shall have the option, to be exercised not later than the receipt of the goods by the carrier, to transfer the right of control to the consignee.

Rotterdam Rules

Introduction

In December 2008, the United Nations Commission on International Trade Law (UNCITRAL) adopted the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea to be known as the “Rotterdam Rules”. This convention had, according to the Resolution of the United Nations General Assembly, become necessary as the “current legal regime governing the international carriage of goods by sea lacks uniformity and fails to adequately take into account modern transport practices, including containerization, door-to-door transport contracts and the use of electronic transport documents”. The Convention will be open for signature on the 23rd September 2009.

The Rules

The Rotterdam Rules are hoped to replace the Hague-Visby Rules and the Hamburg Rules with a comprehensive new system of 96 articles. A full review of these new rules is beyond the scope of this document; however, the following is a brief note on some of the notable changes:

- The carrier is to be liable for loss or damage to the cargo if the loss or damage occurred during the period of its responsibility, unless the carrier can prove that such loss or damage was not
 1. its fault;
 2. or due to the fault of any person for whom the carrier is responsible; or
 3. caused by one of the defences as detailed in the rules.
- “Loss and Damage” has now been extended to include economic loss which occurs from the delay in delivering the cargo after the agreed date of delivery.
- The avoidance of liability for loss and damage caused by an error in the navigation or management of a ship is no longer available to the carrier.
- The avoidance of liability for loss and damage caused by fire is no longer available if it can be proved that the fire was caused or contributed to by the fault of the carrier or a person for whom the carrier is responsible.
- The obligation on the carrier to ensure that the ship is seaworthy before and at the commencement of the sea voyage is now extended to “during” the voyage.
- The carrier’s liability is increased to 875 SDR per package or 3 SDR per kilo.

B. Ireland

The Merchant Shipping Act 1947 introduced the Hague Rules into Irish law while the Merchant Shipping (Liability of Ship-owners and others) Act 1996 incorporates the revised Hague Visby Rules. To date the Irish Government has not become a signatory to the Hamburg Rules and has made no indication on its intentions as regards the Rotterdam Rules.

C. Marine Insurance

Introduction

Marine insurance, the oldest form of insurance, forms an integral part of maritime activities and affects all parties involved in commercial practice including shipowners, carriers and freight forwarders. A unique aspect of marine insurance is the existence of both commercial insurers and non-profit making mutual insurance associations (Protection & Indemnity or P&I Clubs). It is common in practice for shipowners to insure separate parts of their interests with both commercial insurers and P&I Clubs. Lloyd's of London is an example of the distinctive nature of marine insurance whereby marine risks are underwritten by members in accordance with specific rules. Though not an insurance company itself, Lloyd's provides the market place for insurance providers and operates as regulator of the services provided by its members.

A further peculiarity of marine insurance is the concept of General Average (GA) which evolved from maritime practice in response to imminent shipwreck. In order to save a ship in peril of sinking during a storm, some of the cargo may have to be thrown overboard. The ship owner and the owners of the saved cargo obviously benefit at the expense of the owners of the jettisoned cargo. This was deemed unfair and the principal of GA evolved so that all parties would contribute in such a situation.

Typically, marine insurance is split between the vessel and the cargo. Insurance of the vessel is generally known as 'Hull and Machinery'. Cover may be on either a 'voyage' or the more frequently used 'time' basis. The voyage basis covers transit between the ports as set out in the policy; the time basis covers a period of time, typically one year. Hull and Machinery policies may be on either basis but the majority of cargo insurance covers the cargo on a voyage basis from its origin to place of delivery.

Third Party Insurance is another vital aspect for shipowners and covers against liability risks for which the shipowners fall liable. This type of cover is provided overwhelmingly by the mutual P&I Clubs. Other forms of insurance which may be required by the shipowner include War Risks, Freight, Defence, Demurrage (FD&D), Strike Liability and Loss of Hire.

Hull and Machinery Insurance

Hull insurance principally covers loss of or damage to the shipowner's physical property i.e. the insured ship's hull, machinery within and propulsion system. In addition to covering loss caused by the insured peril, a marine insurance policy will also cover GA losses. A hull policy includes a financial value for the insured ship. This is the amount the insured would receive in the event of the ship becoming a total loss – i.e. either physically lost or where the cost of recovery would exceed the value of the ship (constructive total loss).

Over the years standard insurance clauses were developed by the various markets for use in their policies. English, American, Norwegian and German policy documents are in common use both within and outside their home regions.

There are important differences across these policies; e.g., the Norwegian and German documents being all risks – removing from the shipowner the burden of proving that the loss is attributable to a risk specifically covered by the policy. In contrast, the London market developed the “International Hull Clauses”, last updated in 2003. These retain a “named risks” policy. Provided principally at Lloyd’s of London or by commercial insurers, the hull insurance policies incorporating these Clauses do not cover damage to the ship “howsoever caused” but instead list the specific risks covered. The International Hull Clauses provide four classes of cover for hull and machinery owned or leased by the assured party and for parts taken off the vessel. The insured perils are as follows:

- (1) Losses from marine perils for which the insurers are liable whether or not the assured has exercised due diligence.
- (2) Loss from marine perils for which the insurers are liable only if the assured has acted with due diligence.
- (3) Loss of or damage to the vessel caused by any governmental authority acting to prevent or mitigate a pollution hazard.
- (4) 75% cover in respect of damages for collisions. The remaining 25% of cover may be insured with a P&I Club (see below) or the full 100% of cover may be negotiated and agreed upon with the commercial insurers.

Cargo Insurance

The cover under a marine cargo policy is defined by standard policy wordings issued by the Institute of London Underwriters known as the Institute Cargo Clauses. While there are numerous clauses and different clauses will apply to different cargoes, normally the widest cover is provided under Institute Cargo Clauses A (all risks) with more restrictive cover under, Institute Cargo Clauses B (specified risks) and Institute Cargo Clauses C (narrower range of risks).

General Average (GA)

This is the procedure whereby the commercial parties in a shipping venture proportionally share the financial consequences and any losses resulting from a voluntary sacrifice of part of the ship or cargo to save the whole in an emergency. GA is an integral part of maritime law and its principles operate independently of contract or statute, though they are often also expressly incorporated into contracts of carriage.

Typical expenses categorised as GA include claims based on hull and engine damage caused by the efforts to refloat a grounded ship and the cost of tugs engaged to assist refloating. Included also are hull and cargo damage (water damage) by fire fighting operations, discharge and reloading of cargo at a port of refuge and expenses incurred at a port of refuge. However, it is important to note that expenses incurred in forwarding cargo to its destination in another ship will not typically be treated as a GA expense in the absence of an express agreement between the parties.

It is important also to distinguish expenses of GA from those of “particular average” which are covered by the hull insurance. An example of a particular average expense would be the cost of repairing damage caused by the grounding of the ship itself.

York-Antwerp Rules (YAR)

The principle of GA evolved from medieval maritime practices which have been updated and codified into the York-Antwerp Rules (YAR). The Rules represent a group of directives relating to uniform bills of lading and governing the settlement of maritime losses among the several interests, including ship and cargo owners. General Average rules are not based on an international convention but are approved by the CMI. Thus, their legal status is the same as that of standard contract terms. In most countries, General Average rules are not included in legislation but become part of a contract of carriage when referred to in the bill of lading and charterparties and are therefore contractually binding on the parties. In the context of adjusting the GA, the Rules apply to the exclusion of any law and practice that is inconsistent with the provisions contained therein. A pertinent aspect of the YAR is the Rule Paramount which states that “in no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred”.

The CMI are responsible for the revision of the YAR, most recently completed in 2004. The main changes introduced by the 2004 amendments are:

- (i) Salvage is excluded from GA (Rule VI)
- (ii) Port of Refuge expenses are limited to exclude crew's wages.
- (iii) The allowance of commission is abolished
- (iv) Clarification of position regarding temporary repairs
- (v) Variable rate of interest fixed annually.

However, the 2004 changes have not proven popular with shipowners and BIMCO (Baltic and International Maritime Council) have retained the use of the 1994 version of the YAR.

Protection and Indemnity (P&I) Clubs

Protection and Indemnity or P&I Clubs exist to provide third party liability insurance for shipowners. A P&I Club is an association of shipowners who have grouped together to insure each other on a mutual, non-profit making basis against their third party liabilities, these qualities distinguish the P&I Clubs from other insurance providers. The Clubs have been described as shipowners' cooperatives for liability insurance. Each member is both the insurer and the assured. Mutuality spreads the costs of large claims; so that the P&I Club will not get wiped out by one very large claim.

The risks covered by P&I policies are set out in detail in the rules of each club; the most prevalent claims are those relating to loss or damage to cargo and personal injuries actions. P&I also cover the costs of wreck removal. Typically P&I Clubs cover 25% of damages payable in collision situations (with commercial underwriters covering the other 75% of collision liabilities). P&I Clubs also offer freight, demurrage and defence cover as an adjunct to P&I cover.

P&I Clubs work closely with the classification societies and provision of cover is usually conditional on the ship's classification being maintained and on compliance with statutory obligations (SOLAS, STCW, ISM, and ISPS).

P&I Clubs also provide "Letters of Undertaking" or guarantees to ensure that a ship is not arrested in port by a creditor or to allow an arrested ship to sail and continue trading and earning freight. When the security of a letter has been provided, the ship is protected from further arrest. These letters are governed by the general principles of contract law and laws concerning guarantees. The Club provides security for the debt by undertaking to settle the debt and to accept service of proceedings. This provides the parties with a mechanism for discussing the outstanding liability without immediately resorting to costly court or arbitration proceedings. The letters usually contain provisions specifying how the claim should be pursued and the choice of law of jurisdiction. The letter is provided on condition that the claim is covered by the Club's rules and that the member's subscriptions are fully paid up to date. An alternative to a letter of undertaking would be for the shipowner to seek a bank guarantee which is more costly and may take a considerable time to obtain.

International Group of P&I Clubs

This is an association of the thirteen largest P&I Clubs established to pool the costs of the largest claims. The Pooling Arrangement is a fundamental concept of the Group and the claims-sharing mechanism and the limits of cover provided by Group clubs are underpinned by the International Group Agreement.

The Group provides liability cover for approximately 90% of the world's ocean-going tonnage. The Group has imposed limits on claims involving oil pollution and claims in respect of liability to passengers and seamen. Each member of the Group is an independent, non-profit making mutual insurance association and is controlled by its members through a board of directors or committee elected from the membership. The Group Clubs principally operate on the basis of indemnifying the member against covered losses. In principle, the member should first have settled the cost himself and then recover such costs from the Club. This is known as the 'pay to be paid' rule.

The International Group represents the interests of P&I Clubs at IMO and other international conferences affecting the interests of their members.

2.1.2 Employment law

A. Introduction

The main scope of EU regulation with regard to social and working conditions for seafarers is founded on the principles and standards agreed at international level through the IMO and International Labour Office (ILO) Conventions. EU Member States are signatories to the international conventions as the Community is not a party to either the IMO or ILO. The institutions of the EU promote accession to the international conventions and the amending protocols thereto in the Community interest. EU regulation involves the implementation of these codes of practice to ensure common acceptance and enforcement of agreed obligations; the aim of which is to promote seafaring professions while protecting workers rights without diminishing the competitiveness of the sector. The maritime sector operates in a highly globalised context. Indeed, shipping is the most international of all industries. A safe and healthy working environment is generally regarded by regulators as a key factor for competitiveness. The problems associated with open registers and the continued decline in the number of EU seafarers and officers in particular, is a concern for policy makers in the EU. The improvement of working conditions to make the profession more appealing to younger workers is a priority.

Employment conditions for seafarers are intrinsically linked to safety at sea. The recognition of the human element in marine casualties impacts upon amendments to standards, often in response to particular incidents. Therefore, issues such as working conditions, working time and rest periods, adequate training and safety procedures are fundamental to the sector and its continued growth. The existence of “flags of convenience” in world shipping registries has led to the suggestion of “crews of convenience” being used. The negative image of these open registers infers that such crews are often subject to significantly lower qualities of living and working conditions. The enforcement of obligations imposed upon flag states and shipowners with regard to employment conditions on board, has increased the need for port state control to carry out inspections and detentions if necessary, to eliminate sub-standard shipping and encourage compliance with international standards.

B. EU Regulation

In the context of employment within the maritime sector, directives specific to the sector supplement the general directives. The provisions of the EC Treaty on the free movement of workers are also applicable to maritime transport. **Regulation (EC) No 883/2004** facilitates the free movement of workers within the EU by providing a system of co-ordination of social security. This Regulation allows all EU citizens to keep their social benefit entitlements when they move within the EU. In relation to third-country workers legally resident in the EU, **Council Regulation EC No 859/2003** entitles such workers to social security benefits when they move to another Member State in order to stay, live or work there.

There are a number of instances where seafaring workers are subject to specific exclusions from the application of certain EU social laws. The Commission has recognised that derogations exist for example: Directives on the transfer of undertakings, information and consultation of workers, collective redundancies and posted workers. The Commission is calling for a more detailed analysis, and concludes that certain exclusions might not be totally justified and this strategy is ongoing¹.

The predominant legislation in respect of employment conditions for seafarers centres on working time, training and qualifications together with safety procedures. The following is a discussion of the implications of the main EU instruments which transpose international standards into EU law.

Working Time

Working time (Seafarers aboard seagoing ships registered within EU)

The governance of working time for seafarers in Europe is specifically excluded from the general EU regulation regarding working time² and instead is dealt with specifically in **Council Directive 1999/63/EC**. This Directive gives effect to the Agreement on the organisation of working time of seafarers. This was concluded between the social partners representing management and labour in the maritime sector, the European Community Shipowners Association and the Federation of Transport Workers' Unions in the EU (ECSA and FST respectively). The content of the Agreement reflects certain provisions of ILO Convention No 180, discussed below.

An inherent aspect of the Directive is that Member States may maintain or introduce more favourable provisions than those laid down in the Directive and the implementation procedures may not constitute sufficient grounds for reducing the general level of protection for workers. The Agreement applies to seafarers on board every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member State and is ordinarily engaged in commercial maritime operations.

Clause 5 thereof sets out the minimum standards in respect of rest times as follows:

1. The limits on hours of work or rest shall be either: (a) maximum hours of work which shall not exceed (i) fourteen hours in any 24 hour period; and (ii) 72 hours in any seven-day period; or (b) minimum hours of rest which shall not be less than: (i) ten hours in any 24 hour period; and (ii) 72 hours in any seven-day period.

Every seafarer is entitled to paid annual leave of at least four weeks, or a proportion thereof for periods of employment of less than one year, in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and or/practice.

1 Communication from the Commission - Reassessing the regulatory social framework for more and better seafaring jobs in the EU COM(2007) 591

2 Council Directive 93/104/EC

The on-board working arrangements are to be posted up in an easily accessible place, in a standardised format in the working language(s) of the ship and in English. The information should include the schedule of service at sea and in port and the maximum hours of work or the minimum hours of rest required by the laws, regulations or collective agreements in force. All seafarers must possess a certificate attesting to their fitness for the work for which they are employed and have regular health assessments.

The master must do everything necessary to ensure that the rules governing hours of rest and hours of work are complied with, while the shipowner must ensure that the master is given the necessary resources and adequate manpower.

Working time (Seafarers aboard ships using Community Ports)

Directive 1999/95/EC aims to improve safety at sea, combat unfair competition from third-country shipowners and protect the health and safety of seafarers on board ships using Community ports. The purpose of this Directive is to apply the provisions of **Directive 1999/63** (above) which reflect the provisions of ILO Convention No 180, to any ship calling at a Community port, irrespective of the flag it flies in order to identify and remedy any situation which is manifestly hazardous for the safety or health of seafarers. However, **Directive 1999/63** includes requirements which are not to be found in ILO Convention No 180 and which should not therefore be enforced on board ships which do not fly the flag of a Member State of the EU. Thus, **Directive 1999/95/EC** was enacted to apply common standards to non-EU ships in Community ports.

The competent authority of a Member State, in whose port the ship may call, can carry out inspections on board ships, notably after having received a complaint by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution. A prohibition on the ship leaving the port may be imposed until any hazardous deficiencies have been rectified. Whilst the owner or operator of the ship has right of appeal against such detention, an appeal will not suspend the detention. Ships flying the flag of a State which is not a party to ILO Convention No 180 or the Protocol to ILO Convention No 147 should not receive more favourable treatment than those flying the flag of a State which is a party to either the Convention or Protocol or to both of them.

Training, Certification and Watchkeeping

The EU institutions have acknowledged the need to maintain and develop the level of knowledge and skills in the maritime sector and the importance of paying appropriate attention to maritime training and the status of seafarers in the Community. **Directive 2008/106/EC** recast the provisions of **Directive 2001/25/EC**, which was the predominant instrument regarding the minimum maritime education, training and certification requirements for seafarers serving on board Community vessels.

The 2001 Directive, which was substantially amended on numerous occasions³, incorporated into Community law, the standards of competence for international training, certification and watchkeeping laid down by the IMO Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (as revised), the STCW Convention. All Member States are Parties to the STCW Convention. The 2008 Directive clarifies the provisions of the various Directives and updates the Community's role with regard to internationally agreed standards. Furthermore, the European Maritime Safety Agency (EMSA) established by **Regulation (EC) No 1406/2002** assists the Commission in verifying that Member States comply with their obligations with regard to those standards.

Training

The Regulations of the STCW Convention are annexed to **Directive 2008/106/EC** and these are supplemented by the mandatory provisions contained in Part A of the STCW Code. Part B of the STCW Code contains recommended guidance intended to assist Parties to the STCW Convention and those involved in implementing, applying or enforcing its measures to give the Convention full and complete effect in a uniform manner. The 2008 Directive sets out the rules on training and the standards of competence to be met by seafarers in relation to the issue or revalidation of certificates. It also lays down rules on education and training in management of emergency situations, fire-fighting, the provision of medical aid and for crew members responsible for catering services. The categories of seafarer to which these rules relate are: masters, chief mates, deck officers and engineer officers, chief engineer officers and second engineer officers, certain categories of ratings (i.e. those working in an engine-room, forming part of a watch or serving on certain types of ship), and personnel responsible for radio-communications. Particular mandatory training requirements exist for certain categories of vessel, such as tankers and ro-ro passenger ships.

Certification

Directive 2008/106/EC recognises the need to ensure a consistent level of training for the award of vocational competency certificates to seafarers in the interest of maritime safety. Seafarers must hold a certificate of competency issued and endorsed by the competent authority of a Member State entitling them to serve on a ship in the capacity and perform the functions involved at the specified level of responsibility. The minimum level should be based on the standards of training contained within the STCW.

It is essential to ensure that seafarers holding certificates issued by third countries and serving on board Community ships have a level of competence equivalent to that required by the STCW.

³Directive 2002/84/EC - amending the Directives on maritime safety and the prevention of pollution from ships.

Directive 2003/103/EC - minimum level of training of seafarers

Directive 2005/23/EC - minimum level of training of seafarers

Directive 2005/45/EC - mutual recognition of seafarers' certificates issued by the Member States

Therefore, the Directive lays down procedures and common criteria for the recognition by the Member States of certificates issued by third countries, based on the training and certification requirements as agreed by the STCW Convention.

Penalties or disciplinary measures may apply where a company or master has engaged a person who does not hold a certificate as required. The Directive allows Member States to subject seafarers serving on any ship using their ports, irrespective of the flag it flies, to controls in order to verify that all seafarers who are required to be certificated by the STCW are so certificated.

Member States, as port authorities, are required to enhance safety and prevention of pollution in Community waters through priority inspection of vessels flying the flag of a third country which has not ratified the STCW, thereby ensuring no more favourable treatment to vessels flying the flag of a third country. Crew members may be asked to provide an on-the-spot demonstration of their competence. Member States must ensure that the relevant provisions and procedures laid down in Directive 95/21/EC on Port State Control are applied.

Watchkeeping

Directive 2008/106/EC also establishes that provisions on minimum rest periods for watchkeeping personnel should be established in accordance with the STCW Convention and these should be applied without prejudice to the provisions of **Directive 1999/63/EC** (discussed above) on rest and maximum working hours.

Recognition of qualifications

Directive 2005/36/EC⁴ regarding the recognition of professional qualifications also applies to maritime occupations. This Directive is aimed at promoting compliance with the obligations laid down in the Treaty abolishing obstacles to the free movement of persons and services between Member States. However, the mutual recognition of diplomas and certificates provided for under **Directive 2005/36/EC** does not always ensure a standardised level of training for all seafarers serving on board vessels flying the flag of a Member State.

As mentioned above, **Directive 2005/45/EC** regarding the mutual recognition of seafarers' certificates issued by the Member States, amended **Directive 2001/25/EC**. **Directive 2005/45/EC** states that each Member State should recognise any certificate and other evidence of formal qualifications issued by another Member State. Therefore, each Member State should permit a seafarer having acquired his/her certificate of competency in another Member State, to take up or to pursue the maritime profession for which he/she is qualified, without any prerequisites other than those imposed on its own nationals.

⁴ As amended by Commission Regulation (EC) No 1430/2007 and Commission Regulation (EC) No 755/2008

Furthermore, **Directive 2008/106/EC** acknowledges that in the interests of safety at sea, that Member States should recognise qualifications proving the required level of training only where these are issued by or on behalf of parties to the STCW Convention and where full effect to the standards set out in the Convention continues in force. Where the ship flies the flag, or has a master, officer or rating holding a certificate issued by a country which has not ratified the STCW Convention, the provisions in relation to Port State Control continue to apply.

Security and Accident Prevention

The international standards in relation to security and accident prevention are predominantly contained within the International Convention for the Safety of Life at Sea, 1974, as amended (the SOLAS Convention). **Directive 2008/106/EC** updates the Community's position with regard to amendments to the SOLAS Convention. In particular, the Directive sets out the requirements for effective communication, for example, language requirements for bridge-to-shore safety communications and the mandatory provisions relating to radio watchkeeping.

As stated above, the EMSA was established under **Regulation No 1406/2002**⁵ for the purpose of ensuring a high, uniform and effective level of maritime safety and prevention of pollution by ships. The EMSA has been entrusted with the task of reducing the risks of maritime accidents, avoiding marine pollution from ships and the loss of lives at sea.

C. International Labour Organisation (ILO) Regulations

The proliferation of internationally agreed instruments governing employment matters with regard to seafaring professions led to the drafting of the Maritime Labour Convention in 2006 (MLC). This aims to consolidate existing standards in one globally enforceable format. The following section examines the main provisions of the MLC together with the dominant ILO instruments which continue in force.

Maritime Labour Convention 2006 (MLC)

The MLC sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced. The Convention organises, in a consistent framework, standards governing employment conditions, working conditions as well as social security rules on board merchant ships. The MLC consolidates the existing international law on these matters which consists of more than 65 international labour standards related to seafarers that have been adopted over the last 80 years.

⁵ As amended by Regulation (EC) No 724/2004

The MLC will enter into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent. To date the MLC has been ratified by 5 states⁶ representing over 45% of gross world tonnage. The MLC is expected to come into force by the end of 2011.

The institutions of the EU together with the social partners have encouraged support by the Member States for the MLC. The Commission participated in much of the work associated with the drafting of the convention. The Council adopted **Decision 2007/431/EC** on 7 July 2007 authorising Member States to ratify the MLC in the interests of the Community preferably before 31 December 2010. The social partners, ECSA and ETF concluded an Agreement on the MLC on 19th May 2008 which amends **Directive 1999/63/EC** on matters which are regulated by the MLC.

The MLC lays down the labour standards applicable to the crews of vessels with a gross tonnage of 500 tonnes or more engaged in international voyages or sailing between foreign ports. The MLC introduces the maritime labour certificate and maritime labour declaration. This encourages inspections for compliance with its requirements on all foreign ships visiting a ratifying country's ports, even ships from countries that have not ratified the MLC. However, if a ship flies the flag of a country that has ratified the MLC, 2006, and produces the required certification issued by the flag State, the Port State official must accept these documents as evidence of compliance, except in specified circumstances such as where an inspector has clear grounds for believing that a ship is non-compliant or receives a complaint by a seafarer. Port State officials have the power to detain vessels if necessary, not only for safety or environmental shortcomings but also for reasons linked to employment conditions. These are greater powers than inspectors have under the present regime.

The Convention groups a number of provisions by themes under five different titles and aims to guarantee decent living and working conditions on board vessels. Title 1 defines the minimum conditions required for maritime labour, covering health, training, minimum age, and recruitment. The employment conditions set out in Title 2 fix the content of the employment contract, working hours, wage protection, and the rights to leave, repatriation and compensation in the event of the loss of the vessel. Accommodation on board is covered in Title 3 and social protection in Title 4. A major innovation is contained in Title 5 of the Convention where it defines the responsibilities regarding application of the Convention. The Convention requires flag states to put in place effective arrangements for applying the Convention based on the certification system.

⁶ Bahamas, Liberia, Marshall Islands, Norway and Panama - <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?C186>

The ILO have published Guidelines in respect of the implementation of the provisions of the MLC for Port State Control Officers and Flag State Control to promote harmonisation in the implementation of the provisions. The Training Centre of the ILO based in Turin operates a professional training course to Certificate level for trainers and maritime inspectors on the application of the MLC.

Working Time

The current international instruments in place regarding working time for seafarers acknowledge the difficult nature of seafaring professions and the impact this has on safety standards. Fatigue due to excessive working hours has previously been cited as a cause of accidents.

The 1996 Protocol to the Merchant Shipping (Minimum Standards) Convention No. 147, 1976 was the first international instrument to allow countries to inspect ships purely because of concerns over seafarers' hours of work. Convention No. 147 provides the legal basis for Port State Control. The inspections can also be carried out on ships that are sailing under the flag of a country which has not ratified Convention 147 or the Protocol. Previously, countries had been able to launch port inspections and detain vessels on other aspects of working conditions but not out of a concern for excessive working hours of those employed on the ship.

ILO Convention 180 (1996), Seafarers' Hours of Work and the Manning of Ships, stipulates the maximum working hours and minimum hours of rest. The Convention limits seafarers to a maximum of 14 hours work (or a minimum 10 hours rest) in any 24 hour period, and a maximum 72 hours work (or 77 hours rest) in any seven day period. The Convention sets requirements for recording and monitoring hours of work to enable inspection by both port and flag states.

ILO Convention 163 concerning Seafarers' Welfare at Sea and in Port ensures that adequate welfare facilities and services are provided for seafarers both in port and on board ship. Welfare facilities and services are deemed to include welfare, cultural, recreational and information facilities and services. These must be provided to seafarers irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the State in which the ship on which they are employed is registered.

D. International Maritime Organisation (IMO) Regulations

The competences of the IMO and ILO overlap with regard to seafarer's welfare and essential co-ordination between both organisations provide a more competent body of internationally applicable standards.

Training Certification and Watchkeeping

IMO Convention STCW 1978 (as amended) was the first instrument to establish basic requirements on training, certification and watchkeeping for seafarers on an international level. Previously the standards of training, certification and watchkeeping of officers and ratings were established by individual governments, usually without reference to practices in other countries. As a result standards and procedures varied widely. The Convention prescribes minimum standards relating to training, certification and watchkeeping for seafarers which countries are obliged to meet or exceed. The 1995 amendment prescribes mandatory minimum requirements for training and qualifications for masters, officers, ratings and other personnel on passenger ships other than ro-ro passenger ships.

The Articles of the Convention include requirements relating to issues surrounding certification and Port State control. The Convention applies to ships of non-party States when visiting ports of States which are Parties to the Convention. This aims to ensure that no more favourable treatment is given to ships entitled flying the flag of a State which is not a Party. The high rate of accession to the STCW promotes uniform application of international standards of training, certification and watch-keeping.

Security and accident prevention

The predominant international instrument focussing on ensuring maritime safety to encourage prevention of accidents is the IMO Convention for the Safety of Life at Sea (SOLAS) as updated. SOLAS includes provisions on technical safety working conditions, radio-communications, navigation safety, special precautions on special types of ships (cargoes, nuclear ships, high-speed craft), carriage of dangerous goods together with special measures to enhance maritime safety and security.

Chapter IX SOLAS makes the International Safety Management (ISM) Code, adopted by IMO in 1993, mandatory for the safe operation of ships and pollution prevention. The Code requires a safety management system to be established by the ship owner or manager responsible for operating the ship. This provides for safe practice in ship operations and safe working environment and establishes safeguards against identified risks. The system also aims to improve safety management skills of staff ashore and aboard ships, including environmental protection.

In relation to security of ships and port facilities, the IMO adopted the International Ship and Port Facility Security (ISPS) Code which contains both mandatory and optional provisions and came into effect in July 2004. The ISPS Code amends and supplements the SOLAS Convention. It is applicable to passenger, cargo ships, mobile offshore drilling units and port facility service vessels that are engaged on international voyages. The ISPS provides appropriate protective measures for ships and port facilities through its specification of three security levels: normal, medium and high risk. Part of the procedures of the ISPS Code deal with procedures for facilitating shore leave for ship's personnel or personnel changes, as well as access of visitors to the ship including representatives of seafarers' welfare and labour organisations.

E. Port State Control

Whilst monitoring the compliance of ships with the international standards for safety, pollution prevention and shipboard living and working conditions should rest primarily with the flag State; it is recognised that there is a serious failure on the part of a number of flag States to implement and enforce international standards. It is therefore increasingly necessary for port states to monitor the compliance with international standards in respect of ships sailing in the waters under their jurisdiction and using their ports irrespective of the flag state of such ships.

The application of international standards in relation to seafarer's employment conditions places an obligation on countries to inspect ships calling at their ports and to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules. The transposition of IMO rules into the EU legal system, as outlined above, ensures their enforcement allowing Member States to undertake such inspections to promote safe shipping and increase the protection afforded to seafarers within the EU. In the European context, **Directive 95/21/EC** establishes the parameters for Port State Control in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States. It establishes common criteria for control of ships by the Port State and harmonises procedures on inspection and detention, and takes account of the commitments made by the maritime authorities of the Member States under the Paris Memorandum of Understanding on Port State Control (MOU) and the application of IMO and ILO standards.

Each Member State is obliged to inspect at least 25 % of the ships flying other countries' flags which enter its ports. As aforementioned, the Port State is entitled to order the detention of ships where deficiencies are detected. Each competent authority is obliged to publish, once every quarter, details of the number of detentions ordered and the reason(s) for same. Owners or operators of deficient vessels warranting detention are obliged to pay a fee covering the re-inspection costs.

Directive 2001/106/EC makes compulsory the system of inspections of certain potentially dangerous ships and also tightens up measures relating to manifestly substandard ships and ensure more effective implementation of **Directive 95/21/EC**.

Memorandum of Understanding

The IMO has encouraged the establishment of regional organisations, for example the Paris Memorandum of Understanding (Paris MoU)⁷. The Paris MoU consists of 27 participating maritime administrations and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe and is aimed at eliminating the operation of sub-standard ships through a harmonized system of Port State Control.

⁷ Also, Mediterranean MoU, Tokyo MoU and Latin American MoU

The inspections ensure that the ships inspected, irrespective of the flag, meet international safety, security and environmental standards, and that crew members have adequate living and working conditions.

Flags of Convenience

Employment issues in relation to the maritime industry are compounded by difficulties associated with registration of ships on so called “Flags of Convenience” and second registers. A flag of convenience ship is one that flies the flag of a country other than the country of ownership. “Flagging out” is a decision usually motivated by cheaper operational costs through low or no taxes and freedom to employ cheap labour. In ships flying the flags of countries that do not exercise effective jurisdiction and control over them as required by international law, seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety and the safety of the ships on which they work.

F. State Aid for Employment in Maritime Sector

Maintaining and improving maritime know-how together with protecting and promoting employment for European seafarers, is a priority of the Commission as evidenced in their 2004 Communication regarding State Aid to Maritime Transport⁸. The guidelines refer to aid which takes the form of fiscal measures which includes labour related costs, crew relief, investment aid, regional aid, training aid, restructuring aid, public service obligations and aid to short sea shipping. These measures are a response to the climate of “flagging out” and allows for tax relief measures such as introduction of tonnage tax.

Commission Regulation EC No 2204/2002 concerns state aid for employment in the maritime sector, regarding reduced rates of income tax or of contributions for the social protection of Community seafarers in so far as it directly stimulates the development of the sector and employment rather than provides general assistance.

The objective of state aid within the common maritime transport policy is to promote the competitiveness of the Community fleet in the global shipping market. The benefits of schemes must facilitate the development of the shipping sector and employment which are supportive of the Community’s maritime transport interests.

⁸ Commission Communication C(2004) 43 OJ L 13

2.1.3 Competition Law

A. Introduction

This section contains an overview of the most pertinent issues affecting competition law and policy throughout the EU. This section does not purport to be an exhaustive account of this subject area and further analysis may be consulted in Sub-Task 2.1.6.1.

The concept of competition law is designed to ensure freedom in the marketplace by promoting efficiency. Competition law is designed to protect competition and not just competitors in the market. Competition law is principally governed by the European Community Treaty (EC Treaty) and Regulations which are based thereon. Many competition policies of the EU further extend to EEA (European Economic Area) countries through specific agreements to promote cohesion in the maritime sector throughout the geographical area of Europe. Trade affecting ports within the EU is governed by EU law irrespective of whether the parties to same are located outside of the EU.

EU regulation of competition is primarily contained within EC Treaty Articles 81 and 82 as supplemented by various Regulations instigated and enforced by the institutions of the Community. The Commission is the main institution responsible in relation to competition matters. The principle Regulation governing competition in the maritime sector is **Council Regulation 1419/2006**. This repealed **Regulation 4056/86** which was initially the founding piece of legislation pertaining to the maritime sector. **Regulation 4056/86** contained the “block-exemption” for liner conferences to include price-fixing. As of October 2008, the block exemption has been removed from the liner shipping sector and it is now subject to the application of Article 81; notwithstanding that the prospect of individual exemptions remains.

Community law is implemented by the Commission and national competition authorities on the one hand and, national courts on the other. **Regulation 1/2003** is the primary source of law on EC competition procedure which aims to decentralise aspects of competition procedure whilst maintaining a coherent policy throughout the common market. The specific nature of the role of the Commission and of national competition authorities is characterised by the powers conferred on those bodies by the regulation.

The Commission published its “Guidelines on the application of Article 81 to the maritime transport industry” in July 2008 and these contain important information for concerned parties to assess their behaviour and proposed transactions which may infringe competition rules.

Reference will also be made to the US anti-trust legislation in place together with a brief synopsis of the United Nations Convention on a Code of Conduct for Liner Conference (UNCTAD Code on Liner Conferences).

B. Article 81 EC Treaty

The rationale behind Article 81 is that companies should compete independently and should not cooperate to fix prices, bid for work or otherwise coordinate their behaviour in collusive agreements.

Article 81(1) therefore prohibits “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market”.

Undertakings are entities engaged in economic or commercial activities. An entity engaged in purely regulatory or non-economic activities would not be an undertaking and thus not subject to competition rules. Port authorities may be engaged in activities which constitute economic and non-economic elements and therefore may be considered undertakings in certain situations and thus subject to competition rules and not in other situations. Employees are not regarded as undertakings but consultants are deemed to be undertakings.

Article 81 encapsulates both horizontal agreements and vertical agreements. Horizontal agreements are those conducted between undertakings occupying the same position in the market chain, essentially between competitors. This is the more serious threat to competition within the market place and includes the “hard-core restrictions” on prohibited practices. Examples of such prohibited agreements include price-fixing, market sharing and imposition of quotas. Vertical agreements on the other hand are those conducted between undertakings occupying different positions e.g. agreements between retailers and suppliers. Examples of prohibited behaviour may include certain exclusive distribution agreements. As noted above, the Commission’s “Guidelines on the application of Article 81 to the maritime transport industry” contain important information for concerned parties to assess their proposed agreements and how this may impact on competitive practices.

Consequences of breach: Agreements or concerted practices which infringe Article 81 are void, and can result in the imposition of heavy fines by the Commission of up to 10% of the offending undertakings’ annual worldwide turnover. The parties may also face legal action for damages brought by third parties and, in addition, agreements which infringe may be wholly or partly unenforceable. Companies may also suffer the ignominy of being the subject of Commission dawn raids on their private and business premises to obtain documentary evidence in support of investigations into alleged breaches of anti-competitive policies.

Exemption under Article 81(3): It is possible to escape the prohibition contained in Article 81 (1) through the application by the parties for an individual exemption. For an individual exemption to be considered applicable, it must be shown that the agreement or practice:

- 1- contributes to improving the production or distribution of goods or to promoting technical or economic progress,
- 2- while allowing consumers a fair share of the resulting benefit,
- 3- there are no less restrictive means of achieving the efficiencies and
- 4- competition is not eliminated altogether.

The burden of proof to illustrate the above is, however, firmly on the parties applying for the exemption, and it will also be necessary to show that the restrictions are indispensable to achieving the benefits.

By virtue of **Regulation 1/2003** (which is aimed at promoting the decentralisation of enforcement and uniform application of competition law throughout the enlarged EU) granting individual exemptions is no longer a prerogative of the Commission. The granting of individual exemptions is now considered a legal requirement to be automatically granted by national courts and competition authorities where the conditions for same are met. This procedure is known as “self-assessment” whereby the parties, through their legal and economic advisers, evaluate the transaction in the context of the conditions for the exemption in Article 81(3) to apply.

De Minimis Notice⁹ - agreements between small and medium sized undertakings or agreements having very small market shares fall outside the scope of Article 81.

Where horizontal agreements are conducted and the combined market share is less than 10%, such agreements will be allowed without the necessity to apply for an individual exemption but only insofar as they do not involve price fixing, output limitation or market sharing.

In the case of vertical agreements, these will be considered lawful where the market share affected is less than 15%.

Block Exemption for Liner Conferences

For certain sectors, the Council has empowered the Commission to exempt whole categories of specific types of agreements by means of adopting Regulations, the so called “block exemption” Regulations. This effectively legitimizes agreements which may otherwise impinge on competition, on condition that they respect the rules laid down in the Regulations.

⁹ Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (de minimis) OJ C 368 22.12.2001

Block exemptions were afforded in particular to liner conferences through **Regulation 4056/86**. Liner Conferences include associations of ship-owners operating the transport of cargo, on the same route, under a secretariat scheme. The block exemption allowed them to set common freight rates, to take joint decisions on the limitation of supply and to coordinate timetables. The exemption was granted on the assumption that it was necessary to ensure the provision of reliable services.

Regulation 1419/2006 repealed **Regulation 4056/86** and opened the liner shipping sector up to competitive forces within the market. October 2008 marked the end of the transitional period allowed by **Regulation 1419/2006** to implement its provisions. Therefore, all shipping companies operating on routes into and out of Europe (including non-EU carriers) can no longer act in conferences that aim to fix prices and capacity.

Shipping Pools: Undertakings operating through pools bring together similar vessels under different ownership. A pool manager is appointed and is empowered to negotiate contracts and rates with customers on behalf of the members. Any form of horizontal agreements within 'pool' arrangements including tramp and cabotage services will need to be evaluated in light of the provisions of Article 81 as above.

Tramp Services: Tramp services concern the non-regular, maritime transport of bulk cargo that is not containerised, and include a range of economically important services, such as the transport of oil, agricultural and chemical products. Though initially excluded from the ambit of regulation¹⁰, tramp services are governed by **Regulation 1419/2006** since its coming into force in 2006.

Cabotage Services: Cabotage services are maritime transport services, either scheduled (i.e. liner) or unscheduled (i.e. tramp shipping) that take place exclusively between ports in the same EU Member State. Article 81 applies fully to cabotage services under **Regulation 1419/2006**.

Consortia: A consortium is a grouping of shipping lines which co-operate to provide joint maritime cargo transport services and are distinguishable from liner shipping conferences as outlined above. Such agreements usually allow shipping lines to rationalise their activities and achieve economies of scale, thus improving the productivity and quality of liner shipping services. The block exemption applies automatically only to consortia which have a market share of below 30% on any market on which they operate (or 35% if operated outside a liner conference).

¹⁰ The applicability of competition rules to tramp services was specifically excluded under Regulation 4056/86

Regulation 823/2000, allows shipping lines to engage in operational co-operation for the purpose of providing a joint liner service, but not to fix prices. Consortia are afforded a block exemption in similar terms to that which had been afforded to the liner conferences sector. Consortia have not been affected by the introduction of **Regulation 1419/2006** and this block exemption is the last remaining formal shipping exemption available.

However, **Regulation 611/2005** has extended the application of **Regulation 823/2000** for a further five years; the exemption is due to expire on 25th April 2010. It is probable that the Commission would remove the block exemption for consortia due to concerns that conferences may reappear in the form of consortia and thus impede effective competition.

C. Article 82

Article 82 affects the control of market power and specifically prohibits, as an absolute rule, the abuse of dominance by any undertaking having a dominant position in the common market or any substantial part of the common market. A substantial part of the common market could include a single port and/or its routes. The article does not prohibit the existence of a dominant position but rather the abuse of such dominance. No exemption or exception for a breach of Article 82 is possible.

The key factors to be considered are:

- 1- the relevant market (in terms of geography, product and temporal)
- 2- dominance within the defined market
- 3- establishing the abuse of such dominance
- 4- categorising the effect on intra-state trade

Relevant Market – The significance of market definition is apparent from the fact that under one market definition, a port could be dominant in a substantial part of the common market and, therefore, subject to Article 82 but not dominant under a different market definition. In the context of the maritime industry, the relevant geographical area may comprise a single port, a cluster of ports or a service operated between two ports or countries.

In relation to product specifics, the degree of inter-changeability or substitutability in determining the level of dominance. If products are capable of being inter-changed, the greater the probability that they belong to the same relevant market.

The temporal market is rarely relevant in competition law in the context of the maritime industry. This may be of significance in markets such as seasonal cruising or commercial ice-breaking.

Dominance – A “dominant position” is not defined in Article 82 but it is generally understood to mean a position of economic strength such that the dominant undertaking may operate to an appreciable extent independently of its competitors and ultimately of its consumers. Dominance may be either collective or individual. The relevant element is the market share of the nearest competitor which will indicate dominance relative to the defined market.

Abuse – as previously stated the existence of a dominant position is not prohibited; it is the abuse of such dominance which is restricted. Abuse may include charging excessive prices/predatory below-cost prices, refusal to supply existing customers.

The application of Article 82 has been particularly relevant in the context of ports and the evolution of the “essential facilities” doctrine. This doctrine exists where the holder of an essential facility may not abuse its privilege in its dealings with competitors. This is evidenced in port operations where a dominant undertaking which both owns, controls and itself uses an essential facility (i.e. the port) without access to which its competitors cannot provide services to their customers. The refusal of access constitutes anti-competitive behaviour by the dominant undertaking. There is a duty on the dominant undertaking not to impose competitive disadvantages on its competitors without objective justification.

Effect on Intra-State Trade

In order to apply Article 82, there must be an effect on trade between Member States. Given the globalised nature of the European economy, there is often an effect on trade between Member States even where the situation involves one or more entities operating within the territory of a single Member State. Article 82 will apply insofar as the transaction is capable, actually or potentially, directly or indirectly, of affecting trade between Member States and thus having an impact on the internal market.

D. Article 86

Article 86 sets out a special legal regime for the application of the competition rules contained in Articles 81 and 82; where State-owned monopolies or privileged bodies are involved. It provides that Member States may not artificially interfere with the functioning of the marketplace (e.g. by granting unfair privileges to some businesses and not others). Article 86 is particularly relevant in the context of public service obligations, as many European ports are in public ownership or under public control.

Article 86(2) provides that undertakings entrusted with the operation of services of general economic interest having the character of a revenue-producing monopoly (such as ports), are subject to the rules on competition, in so far as the application of such rules does not obstruct the performance of the particular tasks assigned to them.

Article 86(2) cannot be relied upon where operators of services of general economic interest seek to extend their monopolies into ancillary markets and impede competition rules to do so. Ensuring compliance with Article 86 rests with the Commission which may issue directives or decisions to Member States.

E. Article 87 - State Aid

Articles 87 to 89 provide that Member States may not give State aid to businesses which is discriminatory except in certain situations where aid will be deemed compatible with the common market. This to ensure that government intervention does not distort competition and affect intra-community trade. Whilst “aid” is not defined, it is accepted that it may take the form of any financial support including: capital lending, preferential tax levies, export aid; subsidies to cover operating losses; investment grants, indemnities against losses and State shareholding in the undertaking. States may offer direct and indirect financial assistance and fiscal advantages to shipowners, operators, lessors, lessees, ports and seafarers to help promote shipping activities. **Regulation 3094/95** as amended by **Regulation 2600/97** relates specifically state aid applicable to ship building and enumerates the various types of aid and the conditions which must be satisfied for them to be judged compatible with the common market.

Authorisation of aid – under Article 87(3) State aid may be authorised in certain circumstances where government intervention is recognised as necessary for the functioning of an equitable economy. Such aid will be assessed as compatible with the common market and such exemptions are investigated and decided upon by the Commission. State aid is particularly relevant in relation to ports and Articles 86 and 87 are often examined concurrently. The exemption provision contained within Article 87(3)(a) allows aid to be deemed compatible with the common market where it aims to promote the development of areas of particular economic deprivation.

The ‘notification procedure’ is contained within Article 88 whereby Member States are obliged to notify the Commission and await their approval before they grant aid. It is crucial to determine whether assistance may constitute state aid and to notify same to the Commission for approval to have same authorised. Only the Commission may provide such authorisation. Failure to comply with the procedure will result in the Commission taking legal action against the offending Member State and possibly ordering the recovery of incompatible aid granted.

State aid law applies to the provision of aid by Member States only. If aid is provided by non-Member States then the relevant regime is the body of law known as EC anti-dumping law.

Merger Regulation - Regulation 139/2004:

Regulation of mergers aims at avoiding the creation or extension of a dominant position capable of affecting competition within the internal market. Large-scale mergers, acquisitions and certain types of joint venture, known as concentrations must be approved in advance by the Commission. The EU has its own merger control regime which, when it applies, displaces the merger control regime of the Member States and is primarily embodied in **Regulation 139/2004**. This regulation sets out the criteria for determining what entities constitute concentrations and if there is a Community dimension to the transaction.

A **concentration** is defined as a change of control on a lasting basis which results from:

- the merger of two or more previously independent undertakings or parts of the undertakings, or
- the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings
- the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity also constitutes a concentration.

The concept of a **Community dimension** derives from ascertaining the EU and world-wide turnover of the undertakings concerned and is laid down in Article 1(2) and (3) of the Regulation.

Concentrations having a Community dimension must be notified without delay to the Commission, which has the power to approve or deny such a proposed merger. The notification procedure is important given that third parties are invited to comment on the proposed transaction. The Commission must publish the fact of the notification, indicating the names of the undertakings concerned, their country of origin, the nature of the concentration and the economic sectors involved.

The criteria laid down by the Commission in assessing the creation or extension of a dominant position in the shipping are formulated on Article 82 as outlined above including the market position of the undertakings and the likely effect of the merger on other competitors. The determination of the relevant geographical and product markets is of crucial significance as is the percentage of market share in issue. The narrower the definition of the market, the higher the possibility of that the merger will be considered capable of hindering competition.

The assessment of mergers and proposed acquisitions within the shipping sector is subject to intense analysis and strict controls. The Commission analyses the possible co-ordinated effects in shipping markets with particular emphasis on arrangements such as liner conferences, consortia and pools which may increase the risk of anti-competitive behaviour through increased integration.

F. Ancillary Instruments affecting competition

Regulation 4055/86: applying the principle of freedom to provide services for maritime transport. This is an anti-protectionist regulation whose underlying principle is that countries should not reserve national trade for their own transport means.

Regulation 4057/86: addressing unfair pricing practices in maritime transport. This affords the Community its basic anti-dumping legislation in maritime transport and it lays down the procedures to be followed in order to respond to unfair pricing practices by non-Community shipowners engaged in international cargo liner shipping

Regulation 4058/86: regarding coordinated action to safeguard free access to cargoes in seaborne trade.

Regulation 3577/92: aims to eliminate restrictions on the freedom to provide maritime transport services within Member States.

G. US Anti-Trust Law

EU competition law evolved from US anti-trust legislation and the principles contained therein are broadly comparable. As evidenced above, trade affecting the EU will be governed by the competition laws applicable to the EU, this is particularly relevant in relation to liner conferences.

General US anti-trust legislation is codified under Title 15 of the United States Code. However, the **Ocean Shipping Reform Act 1998** contains an anti-trust exemption for the ocean liner industry. Service contracts in relation to same must be filed with the Federal Maritime Commission, an independent federal agency, responsible for the regulation of oceanborne transportation in US foreign commerce.

H. United Nations Conference on Trade And Development Code of Conduct for Liner Conferences (1974) – (UNCTAD Code on Liner Conferences)

Conferences within world shipping have existed since the 1800s; whereby companies formed alliances to ensure their survival in economically turbulent situations for international trade routes. The UNCTAD Code, which came into force in 1983, was adopted by the United Nations to regulate the possible abuses of such conferences and enable each country (particularly developing nations) the right to participate in the liner conferences servicing its trade.

The Code has not been adopted by the US and the introduction of **Regulation 1419/2006** (which prohibits liner conferences within the EU) will create a conflict of law as regards the accession of European Member States to the UNCTAD Code. The European Council has recommended that Member States should withdraw from the Code, although it acknowledges that they cannot be obliged to do so.

2.1.4 Taxation Law

A. International Law

Double Taxation Treaties

The regulation of taxes on an international level has never been attempted. However, individual countries have for years implemented what have become known as Double Taxation Treaties.

Double Taxation Treaties operate on a bilateral basis between two countries to prevent double taxation on direct taxes such as income tax, capital gains tax and inheritance tax. The aim of Double Taxation Treaties is to prevent impediments to international trade. The OECD (Organisation for Economic Co-Operation and Development) and the United Nations provide model Double Taxation Treaties for adoption by countries.

B. European Community Law

Introduction

The founding Treaties of the Community aimed to create a single internal market by removing trade barriers based on national discrimination. To this end four freedoms were established:

1. free movement of workers;
2. free movement of capital;
3. free movement of goods; and
4. freedom to provide services.

The continual success of the four freedoms and the protection of the internal market is largely assisted by ensuring that Member States' taxation systems respect these principles.

So while the Community does not impose a harmonised taxation regime on Member States, it does impose community wide rules in particular areas where differences in Member States could create an obstacle to the success of the four freedoms. To this end, the EC Treaty details a number of specific requirements which can be summarised as follows:

Customs Duties

Article 25 of the EC Treaty prohibits the introduction by Member States of any customs duties or provisions which may have an equivalent effect on imports or exports between Member States.

Discriminatory Taxation

Article 90 of the EC Treaty ensures that no Member States impose, directly or indirectly, on the products of other Member States' internal taxation in excess of that imposed on similar domestic products and that no Member States impose an internal tax which gives protection to domestic products.

Double Taxation

Article 293 of the EC Treaty requires Member States to enter into negotiations with each other with a view to the abolition of double taxation between different Member States within the Community.

Indirect Taxation

Pursuant to Article 93 of the EC Treaty, the European Council may adopt provisions relating to the harmonisation of indirect taxation rules in Member States but only on a unanimous vote based on proposals from the European Commission and after consulting the European Parliament and the Economic and Social Committee. A large number of Directives and Regulations have already been agreed in this area on the basis of that Article.

VAT Directive

One such indirect tax of particular relevance to the area of Maritime Law is VAT. **Council Directive 2006/112/EC** on the common system of value added tax or the VAT Directive, is a codification of the Community wide VAT system. The VAT Directive is divided up into a number of titles which identify key aspects of the regime. The following is a brief outline of some of these key aspects:

Taxable Persons

Taxable persons, who carry out transactions which are subject to VAT are identified in Title III and include:

1. a person who, independently, carries out in any place any economic activity (as defined), whatever the purpose or results of that activity;
2. any person who, on an occasional basis, supplies a new means of transport transported to another Member State; and
3. a Member State who carries out, on an occasional basis, an operation relating to an economic activity and, in particular, the supply, before first occupation, of a building or part of a building and of the land on which the building stands or the supply of building land.

Taxable transaction

A transaction which is subject to VAT is called a taxable transaction and a list of such transactions is identified in Title IV and includes:

1. supplies of goods by a taxable person;
2. supplies of services by a taxable person;
3. intra-Community acquisitions in a Member State of goods from another Member State; and
4. imports of goods from outside the Community.

Place where Taxable Transaction occurs

VAT is calculated on the basis of the value added to goods and services at each stage of production and distribution. Of significance in this regard is the location or “place” of that transaction. In the case of the place of a supply of goods, the places include:

1. the location of the goods at the time of supply (where the goods are not dispatched or transported);
2. the location of the goods at the time when dispatch or transport to the customer begins (where the goods are dispatched or transported);
3. the place of departure of the passenger transport operation (where the goods are sold on board ships, aircraft or trains); and
4. the place where the customer is located (in the case of gas through the natural gas distribution system, or electricity).

In respect of the supply of services, **Directive 2008/8/EC** details certain amendments which will come into effect staggered from January 2009 through to 1 January 2015. The effect of these new provisions will mean that business-to-business supplies of services will be taxed where the customer is situated, rather than where the supplier is located. For business-to-consumer supplies of services, the place of taxation will continue to be where the supplier is established with certain exceptions.

Rates of VAT

Taxable transactions are taxed at the rates set by the Member State where the transaction took place. The standard rate of VAT is a percentage of the taxable amount. Currently, this rate cannot be less than 15 %. There are a number of permissible deviations from this rule, including reduced rates of not less than 5% only on goods and services as detailed in Annex III to the VAT Directive.

Payment of VAT

VAT is charged and collected by each taxable person. The taxable person then deducts from the VAT they have charged the amount of the tax which they have paid to other taxable persons and pays the balance VAT received to the Member State’s national taxation authority.

Direct Taxation

Article 100 of the EC Treaty confers on the Community, the authority to harmonise direct taxes within Member States. Article 100 permits the Council, while acting unanimously on a proposal from the Commission and after consulting with the European Parliament and the Economic and Social Committee, to issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market.

Generally speaking the Council has been slow to interfere in the area of direct taxation, it has however, begun to adopt a number of directives pursuant to this article. The following is a brief note on some of the more relevant directives:

Withholding Tax Exemption Directive

This directive deals with the interest and royalty payments made to associated companies within the Community. Where companies meet the criteria of an associated company as laid down in the directive there is no obligation to withhold income tax on interest and royalty payments. This directive does not apply to all Member States and care should be taken when dealing with such countries.

The Parent/Subsidiary Directive

This directive is concerned with the elimination of tax obstacles in the area of profit distributions between parent companies and subsidiaries that operate in different Member States. This is affected by

1. abolishing withholding taxes on payments of dividends between associated companies of different Member States; and
2. preventing double taxation of parent companies on the profits of their subsidiaries.

Mergers and Exchange of Shares Directive

This directive covers the common system of taxation applicable to mergers, divisions, partial divisions, transfer of asset and exchange of shares, and the transfer of registered offices between companies of different Member States.

C. Irish Law

Introduction

The Irish Taxation system is largely dealt with in the Taxes Consolidation Act 1997 which is also known as the TCA. The TCA is revised and updated on an annual basis in accordance with the new tax measures introduced by the Minister for Finance in his annual budget which are brought into effect through the Finance Act for that year. The following is a brief outline of the main taxes which impact on maritime businesses and their employees.

Income Tax

Introduction

Income tax is chargeable on all income arising in the State subject to certain noted exceptions. From this income, certain tax credits are available depending on a person's personal circumstances. The Revenue Commissioners notify each worker of their tax credits on an annual basis. Income tax is then paid on the remainder of the income under two tax bands of 20% and 41%. The amounts relevant to each tax band also depend on circumstances of the tax payer and can be summarised as follows:

Single/Widowed without dependent children	€36,400 @20%, balance at 41%
Single/Widowed qualifying for one- parent family tax credit	€40,400 @20%, balance at 41%
Married Couple (one spouse with income)	€45,400 @20%, balance @ 41%
Married Couple (both spouses with income)	€45,400 @20% (with an increase of €27,400 max), balance @41%.

Income Levy

In addition to income tax paid in accordance with the two tax bands, there is now an income levy payable by all taxpayers. The levies payable are based on which bracket the taxpayer's income falls into.

The brackets are as follows:

- where income is less than €18,304 per annum, the income is exempt;
- income of up to €100,100, 1% of income is charged;
- income of between €100,100 and €250,120, 2% of income is charged; and
- income over €250,120, 3% of income is charged.

Income Tax relief

Certain tax reliefs are available to tax payers depending on their circumstances. Of particular relevance in the maritime context is the specific tax allowance for seafarers. The allowance permits seafarers to earn €6,350 tax free on income which is subject to the highest rate of tax.

In order to qualify for this allowance a number of criteria must be met, they are as follows:

- the seafarer must be at sea on a voyage to or from a foreign port for at least 161 days in the tax year. It also applies to seafarers on vessels which service drilling rigs;
- the employment must be performed wholly on board a sea going ship in the course of an international voyage. A seagoing ship means a ship other than a fishing vessel that is registered in the shipping register of an EU Member State and is used solely for the purposes of carrying passengers or cargo for reward;
- the voyage must begin or end in a port outside the State. A rig or platform situated in any maritime area is regarded as a port - including rigs within the Irish continental shelf;
- the seafarer must not be a public sector employee; and
- written claim for relief must be submitted at the end of the tax year to the Revenue Commissioners. This claim should include a statement from the employer giving details of the voyages, the number of days involved and the dates the seafarer was absent from the State.

It should be noted that this allowance is only available as an alternative to the Trans-Border Workers Relief details of which can be found on the Revenue Commissioner's website.

Corporation Tax / Tonnage Tax

There are currently two tax options available to shipping companies in Ireland with regards to their profits. They are the standard Corporation Tax regime or the Tonnage Tax regime. The companies who qualify are free to elect which taxation regime is most appropriate to them given the nature of their business.

Corporation Tax

A company which is resident in Ireland is subject to corporation tax in respect of all its profits regardless of where they arise and whether or not they are brought back into Ireland. A company's profits are defined as its income plus its chargeable gains.

Irish Resident Companies

All companies incorporated in Ireland and companies which are managed and controlled in Ireland are deemed to be Irish resident companies. This general rule does not apply however where,

- either the company or a related company is carrying on a trade in the State and either the company is ultimately controlled in a tax treaty country or in an EU Member State or the company or a related company is quoted on a recognised stock exchange in the EU or in a tax treaty country or
- the company is treated under a tax treaty as not resident in the State.

It should be noted however, that a non-resident company which carries out its business in Ireland through a branch or an agency is liable to corporation tax on the income and any gains of the branch or agency.

Rates of Corporation Tax

There are five rates of corporation tax payable on companies' profits. They can be classified as follows:

- 10% payable on trading profits of manufacturing companies and certain grant aided activities;
- 12.5% payable on trading income;
- 20% payable on profits arising from certain residential land deals and chargeable gains; and
- 25% payable on passive non-trading income and income from "excepted trades" as detailed in the Taxes Consolidation Acts.

Corporation tax rate of 12.5% is the most generally applicable rate.

Tonnage tax

Introduction

Irish tonnage tax is a specific form of corporation tax introduced by the Irish government in respect of qualifying shipping companies. This tax is based on a 'notional' profit which is taxed at the normal Irish corporation tax rate of 12.5% rather than being based on the actual profits of the company.

Calculation of Notional Profit

Calculation of the notional profit is straightforward. The company applies the "fixed profit rates" as detailed below to their vessels net tonnage. Once this figure has been ascertained the standard corporation tax rate for trading income of 12.5% is applied. This figure is their corporation tax liability on these profits regardless of the actual profits made.

Fixed Profit Rates

Net Tonnage of Each Ship

Notional Profits

For each 100 tons up to 1,000 tons:	€1.00 per day
For each 100 tons between 1,000 tons and 10,000 tons:	€0.75 per day
For each 100 tons between 10,000 and 25,000 tons:	€0.50 per day
For each 100 tons over 25,000 tons:	€0.25 per day

Qualifying Companies

In order to qualify for this regime, a company must satisfy certain criteria:

- the company must operate qualifying vessels. The Taxes Consolidation Act defines a qualifying vessel as
“Seagoing vessels of an adequate size to engage in reasonable commercial operations and which complies with all the requirements for navigation at sea imposed by the competent authorities of any country or territory, certificated as such under the International Load Lines or the SOLAS (Safety of Life at Sea) Convention.”
Certain categories of ships are expressly excluded and include fishing vessels, private recreation vessels, oil rigs, tankers used for oil extraction activities, dredgers and non-ocean going tugs. Ships are also excluded if their main use is the provision of goods or services normally provided on land;
- The company must be subject to Irish corporation tax; and
- The company must undertake the strategic and commercial management of those qualifying vessels in Ireland.

Ship-owners, Bareboat Charterers and Ship Managers are generally those who meet the above criteria and qualify.

Election of the scheme

Once a company qualifies, they must elect to take part in the scheme within three years from the date which they qualify. Failure to do to make this election results in the company not being eligible to join for ten years. Where a qualifying company makes the election, the election is for a maximum of 10 years but can be renewed for a further ten years at any time. If an Irish tax resident company who is part of a group of companies, elects to become part of the regime then all companies of that group must also do so.

What profits qualify?

This regime applies to five different forms of profit. Any profits which do not fall within these categories are taxed under the normal corporation tax rates as discussed above. The five categories are as follows:

1. income from operation of qualifying vessels;
2. income from shipping management services;
3. income from voyage/time charters;
4. dividends from foreign shipping companies; and
5. capital gains from shipping assets.

Additional benefits

In addition to the obvious benefit on the corporation tax payable, the tonnage regime offers other advantages to those who qualify. These include, amongst others:

- no ownership requirement on any of the qualifying companies;
- vessel financing advantages;
- no training requirements;
- no capital gains tax payable;
- qualifying vessels do not have to be Irish flagged; and
- time charter-in three times your owned/bareboat tonnage which will shortly be amended to ten times once a commencement order is put in place by the Minister for Finance.

Irish Holding Companies

Favourable Tax Conditions

Establishing a holding company in Ireland has become hugely advantageous in recent years. This is due to the adoption of extremely favourable tax conditions by the Irish government. Amongst these conditions are:

- an Irish withholding tax exemption on dividend and interest payments made to EU Member States and Tax Treaty Countries;
- tax deduction for debt incurred to acquire shares in subsidiary companies;
- no controlled foreign company or transfer pricing rules; and
- extensive tax treaty network.

In recent years two further provisions were introduced in respect of holding companies, these are:

1. a capital gains tax exemption in respect of the disposal of shares in subsidiary companies; and
2. a favourable tax credit system in respect of dividends received from foreign subsidiaries.

Capital Gains Tax Exemption

The disposal of shares in an Irish or foreign company by an Irish resident company will be exempt from the payment of CGT once the following are met:

- the shares disposed of are held in a company that is resident for tax purposes in either an EU Member State or a taxation treaty country;
- the company disposing of the shares must have held (either directly or indirectly) at a minimum 5% of the issued share capital of the company; and
- more than 50% of the value of the disposed shares must not be from land or mineral rights in Ireland, or form part of a foreign life business fund.

Improved Tax Credit System for Dividends Received from Foreign Subsidiaries

Foreign dividends received by an Irish resident company are subject to 25% corporation tax.

If the Irish resident company holds 5% or more of the issued share capital of the foreign company, then Ireland provides a tax credit in respect of corporate taxes paid by the foreign company in their country of registration and in respect of the foreign withholding taxes paid on those dividends.

Irish resident holding companies are entitled to pool together foreign tax credits for dividends received from numerous companies in various jurisdictions.

Value Added Tax (VAT)

The Vat Acts 1972 to 2008 is the legislation governing value added tax (VAT) in Ireland. This legislation incorporates the terms of the European VAT Directive. VAT is an indirect tax on consumption, imposed at each point of the production process, with the final charge being born by the consumer. The following is a brief outline of the key provisions of the VAT Acts:

When does VAT apply?

Section 2 of the VAT Act states that in order for VAT to apply all of the following conditions must apply:

1. there must be a supply of goods or services;
2. the supply must be effected within the State;
3. the supply must be for consideration;
4. the supply must be made by a taxable person; and
5. the supply must be made in the course or furtherance of business.

Supply of Goods and Services

Sections 3 and 5 of the VAT Acts provide guidelines as to what constitutes a supply of goods or services as provided for in Section 2.

A supply of goods will occur where there is a:

- transfer of ownership of goods by agreement;
- the sale of movable goods through an undisclosed agent;
- the handing over of goods that are subject to a hire purchase agreement;

- the compulsory purchase or legal seizure of goods;
- the transfer of goods within a business by a business person from a taxable activity to an activity exempt from VAT; and
- an appropriation of goods by a business person for private use.

Anything which does not fall within the definition of a supply of goods is in accordance with section 5, a supply of services.

Taxable Person

A taxable person is the term allocated in the VAT Act to a person who is obliged to or elects to register for VAT. The persons who are obliged to register are those whose turnover from the supply of taxable goods or services, exceeds or is likely to exceed certain allocated limits in a twelve month period.

Rates of VAT

Once it is established that a transaction is liable to VAT then the rate of VAT must be determined. The rates which are relevant in the context of transactions associated with shipping and maritime related activities are as follows:

1. Goods and services liable to VAT at the rate of zero are listed in the second schedule to the VAT Act and include amongst other things:
 - the supply, repair and hiring of sea going vessels of 15 tonnes or more;
 - the provision of docking, landing, loading or unloading facilities, including customs clearance, directly in connection with the disembarkation or embarkation of passengers or the importation or exportation of goods;
 - goods delivered on board ships going to places outside the State;
 - repairing and servicing repairing and servicing of ships and aircraft engaged in international commercial transport of passengers and goods;
 - fishing nets, and sections thereof, of a kind commonly used by commercial fishermen for the purposes of their occupation and not commonly used for any other purpose;
 - services provided by the Commissioners of Irish Lights in connection with the operation of lightships, lighthouses or other navigational aids; and
 - the construction, repair, maintenance and improvement of roads, harbours and sewerage works by the State, local authorities or harbour authorities.
2. Supplies of goods and services which are exempt from VAT which are of relevance in this context include:
 - passenger and accompanying baggage transport.
3. If a supply of a good or service is within the VAT net but is not liable to any of the exemptions or reduced rates then VAT at the standard rate of 21.5% is payable.

2.1.5 Environmental Law

A. International Law

United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS was adopted in 1982 in an effort to place a legal framework on all aspects of ocean space. Part XII of the Convention, entitled “Protection and Preservation of the Marine Environment”, assigns duties and jurisdictional rights to States in the area of marine pollution. Six sources of marine pollution are identified in the UNCLOS from land-based to pollution from or through the atmosphere.

General Obligations of all States

Under UNCLOS, each state has certain general obligations, these include:

- to take measures to “prevent, reduce and control pollution of the marine environment”- Article 194;
- to cooperate on a global and regional basis in formulating rules and standards - Article 197;
- to notify other states once they become aware of “imminent dangers to the environment” if it is likely to be affected by the damage. They must also notify “the competent international organisations” such as the IMO - Article 198;
- to co-operate to develop common emergency plans to respond to pollution incidents - Article 199; and
- to exchange information or data which they have acquired about pollution of the marine environment - Article 200.

Enforcement by Coastal States - Territorial Sea

UNCLOS permits Coastal States to enforce their national requirements and anti-pollution measures within their territorial sea. UNCLOS does however place three identifiable limitations on this sovereignty when dealing with marine pollution. They include the following:

1. Coastal States are not permitted to take any measure concerning the construction, manning and equipment of foreign ships in territorial waters, unless to give effect to internationally agreed standards;
2. All standards must be at least as effective as international criteria; and
3. The right of innocent passage of foreign vessels in the territorial waters must be regarded at all times.

Enforcement by Coastal States - Exclusive Economic Zone

The Exclusive Economic Zone (EEZ) is an area beyond and adjacent to the territorial sea. UNCLOS only allocates “rights, jurisdiction and duties” to Coastal States and limits their sovereignty as follows:

1. sovereign rights are accepted in respect of certain listed activities - Article 56(1)(a);
2. the protection and preservation of the marine environment is under the jurisdiction of the Coastal States - Article 56(1)(b);

3. the rights and duties of Coastal States are to be exercised with “due regard to the rights and duties of other states”, and “in a manner compatible with the provisions of this Convention” - Article 56(2); and
4. certain rights to ask for information, inspect and in certain circumstances institute proceedings, including detention, are provided to Coastal States.

Enforcement by Flag States

Article 217 requires the "flag State", the State where a ship is registered and whose flag it flies, to enforce the rules adopted for the control of marine pollution from vessels, irrespective of where a violation occurs. This ensures the enforcement of international rules, particularly in waters beyond the national jurisdiction of the Coastal State, i.e., on the high seas.

Enforcement by Port State

Article 218 permits the "port State", or the State where a ship is destined, to enforce any international rule or national regulations adopted in accordance with UNCLOS or applicable international rules as a condition for the entry of foreign vessels into their ports or internal waters or for a call at their offshore terminals.

Enforcement beyond Territorial Waters

Article 221 stipulates that pollution or the threat of pollution arising out of maritime casualties beyond territorial waters can be dealt with by any state. However, the measures taken must be “proportionate to the actual or threatened damage”.

International Maritime Organisation (IMO)

Although the IMO was initially concerned mainly with shipping safety, the organisation now also deals with marine pollution. The IMO, through its committees puts forward regulations on marine pollution issues, discusses these issues at conferences and then adopts conventions regulating the issues. The responsibility for the monitoring and enforcement of these conventions rests on the ratifying governments.

The following is a brief outline of some of the more significant conventions which have come into force since the founding of the IMO:

Operational Pollution from Ships – MARPOL Convention

The principal convention concerning operational pollution from ships is the International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78. Its primary objective is to preserve the marine environment through the complete elimination of pollution by oil and other harmful substances and the minimization of accidental discharge of such substances.

Carriage of Dangerous Goods

The carriage of dangerous goods is regulated by Chapter VII of the International Convention for the Safety of Life at Sea 1974 (SOLAS Convention) and by the IMO's International Maritime Dangerous Goods (IMDG) Code of 1966. Both of these instruments contain provisions relating to packing, marketing, labelling, documentation and storage of dangerous goods.

Movement of Hazardous Wastes

The 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal sets out certain obligations in respect of human health. In line with SOLAS and IMDG Code, packaging, labelling and transport requirements are similarly imposed.

Transportation of Radioactive Material

The INF Code, (International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel) together with the IMDG Code, regulations of the International Atomic Energy Agency and provisions in the SOLAS Convention deals with the transport of radioactive material.

Use of Non-Military Nuclear- powered ships

Chapter VIII of SOLAS and the Code of Safety of Nuclear Merchant Ships govern the use of non-military nuclear-powered ships.

Intervention on the High Seas in Cases of Oil Pollution Casualties

The 1969 Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, known as the Intervention Convention governs the action of Coastal States in respect of a "maritime casualty" beyond the territorial seas, on the high seas.

Oil Preparedness, Response and Co-Operation

The 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation, (OPRC) deals extensively with the co-operation of States to develop emergency plans. Articles 3 and 6 require States, ships and port authorities to have a system of response to oil pollution incidents in place. Articles 7 and 8 stipulate that States must also abide by exchange of information and technical assistance duties.

B. The European Community (The Community)

Acceding to the United Nations Convention on the Law of the Sea (UNCLOS)

One of the core International Conventions pertaining to the protection of the marine environment is UNCLOS (see the International Section). It sets down the rights, duties and jurisdiction of flag, coastal and port states when dealing with ocean pollution. In April 1998, the Community ratified and became a party to UNCLOS.

When ratifying UNCLOS, the Community made a declaratory statement, in which it recalled the repartition of competence between the Member States and the Community. The areas of vessel-source pollution, jurisdiction over vessels, flagging and registration of vessels and enforcement of penal and administrative sanctions remain within the competence of each of the Member States “whilst respecting Community Law”.

However, the areas of maritime transport, safety of shipping and prevention of marine pollution are to be part of the exclusive competence of the Community “only to the extent that such provisions of the Convention or legal instruments adopted in implementation thereof affect common rules established by the Community”:

Community Legislation

Community legislation aimed at the protection of the marine environment is wide and varied. The following is a brief note on some of the more significant pieces:

Natura 2000

Natura 2000 is a European network of protected areas designated by the Member States within which special rules of environmental protection apply based on legally binding legislation:

- The Wild Birds Directive (**Council Directive 79/409/EEC** on the conservation of wild birds); and
- The Habitats Directive (**Council Directive 92/43/EEC** on the conservation of natural habitats and of wild fauna and flora).

Wild Birds Directive

The Wild Birds Directive aims to protect all European wild birds and the habitats of listed species. Article 3 of the Wild Birds Directive requires Member States to take “the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats” for all wild birds through the creation, upkeep and management of protected areas.

Site Designation

Pursuant to Article 4 of the Wild Birds Directive, Member States must designate “the most suitable areas within their territories” as Special Protection Areas (SPAs).

Site Conservation

The Site conservation obligations have been amended to reflect those as set out in the Habitats Directive and can be seen below.

Species Protection

Articles 5, 6, 7 and 8 of the Wild Birds Directive provide for restrictions on hunting times, prohibitions on the killing or capturing of birds and on the taking of eggs. Article 9 of the Birds Directive provides for derogation from the latter articles for a limited number of reasons “where there is no other satisfactory solution”.

Habitats Directive

The Habitats Directive extends the Wild Birds Directive and broadens it to include the full range of wild fauna and flora and natural habitats.

Site Designation

Both the Commission and the Member States are involved in the three staged process of designating protected sites. These stages can be summarised as follows:

- 1 Member States submit a list to the Commission of sites within their territory which are important for the conservation of habitat types of Community interest or of particular species of fauna or flora of Community interest subject to certain restrictions;
- 2 Once in receipt of these lists, the Commission, in agreement with the individual Member State, establishes what is known as a list of Sites of Community Importance (SCIs);
- 3 The Member State must within six years of the formulation of the list of SCIs designate the sites as Special Areas of Conservation (SACs).

Of particular relevance in the context of Marine Environment, are the SACs noted in Annex I to the Directive which are as follows:

1. Coastal and Halophytic Habitats
These include open sea and tidal areas, sea cliffs and shingle or stony beaches, Atlantic and continental salt marshes and salt meadows, Mediterranean and thermo-Atlantic salt marshes and salt meadows, salt and gypsum inland steppes, Boreal Baltic archipelago, coastal and land upheaval areas.
2. Coastal Sand Dunes and Inland Dunes
These include, sea dunes of the Atlantic, North Sea and Baltic coasts; Sea dunes of the Mediterranean and coast inland dunes, old and decalcified.

Site Conservation

Article 6 of the Habitats Directive deals with the obligations of Member States with respect to the protection of SACs. These obligations include:

1. the establishment of management plans and the appropriate measures to implement same;
2. to avoid deterioration of habitats and significant disturbance of species; and
3. to ensure an appropriate assessment of plans and projects is put in place in order to identify anything which might adversely affect a site.

Species Protection

Articles 12-16 of the Habitats Directive stipulate the necessary measures which are to be taken to prohibit the deliberate capture, killing, disturbance, taking of eggs or deterioration or destruction of breeding sites or resting places of the endangered species of flora and fauna as detailed in Annexes IV and V of the Directive.

Carriage of dangerous or polluting goods

- **Council Directive 93/75/EEC** on minimum requirements for vessels bound for or leaving Community Ports and carrying dangerous or polluting goods; This directive is an effort to implement at Community level the INF Code as discussed in the International Section.

Shipment of radioactive substances and nuclear waste

- **1959 Council Directive** - lays down the basic standards for the protection of the health of workers and the general public from ionising radiation;
- **Council Directive 92/3/Euratom** - on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community; and
- **Council Regulation 1493/93** on shipments of radioactive substances between Members sets up a system of prior declaration for the shipment of radioactive substances between Member States.

Technical standards for the shipping sector

- **Council Decision 98/434/EC** – deals with the Agreement between the European Community, the European Space Agency and the European Organisation for the Safety of Air Navigation on a European contribution to the development of a global navigation satellite system;
- **Council Decision 92/143/EEC** - on radio navigation systems for Europe;
- **Council Directive 96/89/EC** - on marine equipment;
- **Commission Decision 2000/638/EC** - on the application of Article 3(3)(e) of **Directive 1999/5/EC** to marine communication equipment intended to be fitted to seagoing non-SOLAS vessels and which is intended to participate in the global maritime distress and safety system (GMDSS) and not covered by **Council Directive 96/98/EC** on marine equipment; and
- **Council Directive 2000/59/EC** - on port reception facilities for ship-generated waste and cargo residues.

Common rules for the registration and inspection, of ships

- **Council Directive 94/57/EC** - on common rules and standards for ships inspections and survey organisations and for the relevant activities of maritime administrations.

Port State Control

- **Council Directive 95/21/EC** on the enforcement of international standards for ship safety, pollution prevention and shipboard living and working conditions in respect of ships using Community ports and sailing in the waters under the jurisdiction of the Member States; and
- **Council Directive 96/40/EC** establishes a common model for an identity card for inspectors carrying out Port State Control.

C. Irish Law

Intentional Pollution – The Sea Pollution Acts 1991 to 2006

The Sea Pollution Acts 1991 to 2006 give effect to the Convention on the Prevention of Pollution from Ships (1973) and the 1978 Protocol, collectively referred to as MARPOL 73/78. MARPOL73/78 aims to tackle several forms of intentional pollution other than dumping.

Discharges

Pursuant to the 1991 Act, the Minister for the Marine is authorised to deal with “Discharges at Sea” as therein defined. Section 10 of the 1991 Act stipulates that the Minister may make regulations prohibiting or regulating discharges anywhere at sea from ships registered in the State, or discharges in the State “from any ship” of oil, oily mixture, noxious liquid substance, harmful substance, sewage or garbage . This list is in line with the 6 pollutants detailed in the annexes to MARPOL 73/78. To date the Minister has made five sets of regulations regarding these individual forms of pollution.

Duty to report discharges

A duty to report discharges is imposed by Section 13 of the 1991 Act on the owner or the master of the ship in certain stipulated circumstances. If the discharge occurred in a harbour, they must report it to the harbour master, who will in turn report to the Minister.

Section 35 of the 1991 Act provides that where a discharge of any substance to which the 1991 Act applies is sighted, a ship registered in the State, or any other ship while in the State, if sighted in the vicinity of the discharge, shall be presumed to have committed the discharge, until the contrary is proven.

Construction etc of Ships

Section 14 of the 1991 Act permits the Minister to make regulations requiring ships registered in the State to be constructed, fitted or operated in certain ways, and to comply with standards relating to the prevention, control and reduction of discharges.

Passage of Ships

Pursuant to section 23 of the 1991 Act, the Minister may make regulations to prevent the passage of certain ships in the State if “he has reasonable cause to believe it will cause serious threat of hazards to human life, harm to living marine resources, or harm to fauna or flora, or damage to amenities, or interference with legitimate use of the sea.”

Transfers between ships

In an effort to protect against discharges, the transfer of a ship's stores, cargo or oil to or from a ship in a place in the State, which is not at harbour, may only take place in accordance with a permit delivered by the Minister in accordance with section 12(3) of the 1999 Act.

Dumping – Dumping at Sea Act 1996

The Dumping at Sea Act 1996 implements three conventions, the Convention for the Protection of the North East Atlantic (OSPAR), The London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters and the Oslo Convention for the Prevention of Marine Pollution from Ships and Aircrafts.

Dumping

Section 1 of the Act defines “dumping” as the “deliberate disposal in the maritime area” of a substance or material in conjunction with a vessel, aircraft or offshore installation with three noted exceptions. Section 2 of the Act stipulates the instances where dumping is prohibited.

Authorised Dumping in certain circumstances

Section 5 of the Act permits the Minister for the Marine, in consultation with other stipulated ministers, to grant a permit authorising dumping of specified vessels or aircraft, or specified substances or material in specific places, within a specific period of time, or the loading of vessels or aircraft for the purpose of dumping (under the same circumstances).

Enforcement

Section 6 gives authorised officers certain powers of inspection and detention for the purpose of the Act. Offences committed anywhere in the maritime area, as defined in the Act, may be considered as having been committed in the State, and proceedings may be taken in accordance.

Defences

It is a defence under section 2(2) of the Act to show that the dumping is the result of a mistake, or act or default by another person, or accident which went beyond the control of the defendant, and that the defendant took all reasonable precautions to avoid the commission of the offence.

Dumping which is deemed to be reasonably necessary to secure the safety of a vessel or aircraft or saving life, does not constitute an offence under the Act.

Emergency Response to Pollution Incidents

International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Intervention Convention) – The Sea Pollution Act 1991

The Sea Pollution Act 1991 implements Ireland's obligations under the Intervention Convention.

Section 26 permits the Minister for Marine to exercise powers to control pollution in circumstances where there is "danger from pollution or threat of pollution by oil, or any substance other than oil ... following upon a maritime casualty" and there are reasonable grounds for believing that there is "grave and imminent danger of major harmful consequences through pollution to the coastline or related interests".

Under the Act the Minister can

1. give directions to the following: Master or owner; salvor in possession of the vessel and in charge of the salvage operation; any person in charge of the ship; and or any other person to whom it is reasonable to give directions;
2. take any necessary steps in order to prevent, mitigate or eliminate pollution arising out of the maritime casualty; and
3. Sink, destroy or take over control of a ship.

International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC Convention) - The Sea Pollution Act 1999

The Sea Pollution Act 1999 implements the OPRC Convention into Irish Law. Section 3 of the Act sets out the authorities which are required to have an oil pollution emergency plan in place in order to prevent and minimise damage arising out of an oil pollution incident occurring within the area under their authority. The co-ordination and supervision of oil pollution responses is overseen by the Irish Coast Guard.

International Convention on Salvage - The Merchant Shipping (Salvage and Wreck) Act 1993

The Merchant Shipping (Salvage and Wreck) Act 1993 implements the International Convention on Salvage. The Act stipulates the measures to be taken with vessels in distress, and with the salvage of wrecked and stranded vessels.

Vessels in distress

The Irish Coast Guard as an authorised officer, pursuant to Section 7 of the Act, has primary responsibility for a vessel in distress in the State. Section 7 (2) sets out the powers of the authorised officer. If the ship in distress is situated in a harbour, the Harbour Master shall have the same responsibility in accordance with Section 8 of the Act.

Salvage Operations

The Act imposes upon all involved in a salvage operation, a range of duties regarding the environment. Under section 20(1) (b), the salvor owes to the owner of the vessel and of the property in danger, the duty to carry out the salvage operations with due care and, in particular, “to prevent or minimise damage to the environment”. Section 21 imposes a similar duty on the owner and master of a vessel, or owner of other property in danger.

Section 22 reserves the right of the Minister, or “any other person under this Act, the Sea Pollution Act or any other enactment” to take measures to protect the coastline or related interests from pollution or the threat of pollution following upon a maritime casualty, or to give directions in relation to salvage operations having regard to the need for co operation between the parties involved.

Generally Applicable Environmental Legislation

Wild Birds Directive

The provisions of the Wild Birds Directive have been incorporated into Irish law through regulations and amendments to the existing Wildlife legislation. Since August 1985 a number of regulations have been introduced under the European Communities Act 1972. These regulations deal with site designation and site conservation under the Wild Birds Directive. The regulations designate certain areas as Special Protection Areas (SPAs) in compliance with article 4 of the Directive and there are now a total of 125 of such designated sites. It should be noted however, that the regulations lay down no statutory procedure for the designation of SPAs.

The regulations in addition to designating certain sites, make it an offence to dispose of certain materials as detailed in section 4 in a SPA “so as to create or tend to create pollution or deterioration of habitats or any disturbance whatsoever affecting the species to which Article 4 of the Directive relates”.

The Wild Birds Directive protects not all wild birds whether threatened or not. The Wildlife Act 1976 as amended by the Wildlife Act 2000 adopts this provision into Irish by providing that all wild birds, their nests and eggs save for some exceptions are protected and that a person will be guilty of an offence, if they do any of the following: hunts or injures a protected wild bird, takes their eggs or young, or destroys their nests, other than in accordance with a valid hunting licence, or written permission from the Minister.

Habitats Directive

The Habitats Directive was transposed into Irish law in February 1997 by means of the European Communities (Natural Habitats) Regulations 1997. The regulation is subdivided into several parts which give effect to the provisions of the Habitats Directive.

Site Designation

Part II of the Regulations sets out the procedures involved in the preparation of a provisional list of proposed Special Areas of Conservation (SACs), known as a list of Sites of Community Importance (SCIs), which is submitted to the Commission. It then addresses the procedures to be followed once the list of SCIs has been agreed with the Commission so that the Minister for Arts, Culture and the Gaeltacht may formally designate them as SACs. Part II also considers management agreements entered into by the Minister in respect of land located in or adjacent to one of these sites in accordance with the section 18 of the Wildlife Act 1976.

Site Conservation

Chapter III of Part II of the Regulations sets out certain limitations on the “operations or activities” of SACs and SCIs as defined in the regulation which would damage or interfere with the integrity of such sites.

Species Protection

Part III of the Regulations deals with the measures relating to the protection of species of flora and fauna contained in Articles 12-16 of the Habitats Directive. It does this by extending the ambit of Chapter II of Part II of the Wildlife Act 1976 to all species listed in the Annex to the Habitats Directive and sets out certain activities which are prohibited in SACs.

D. Regional Conventions

Introduction

The international and European instruments are supplemented by a number of regional agreements typically conducted between the countries bordering the relevant body of water. The European Community has adopted Council Decisions to enable it to accede to the various regional Conventions. The principal regional conventions are the Helsinki Convention (Baltic Sea), the Barcelona Convention (Mediterranean Sea) and the OSPAR Convention (North-East Atlantic).

The Helsinki Convention¹¹

The 1974 Helsinki Convention, as amended in 1992, was signed by all the States bordering the Baltic Sea¹². This Convention aims to reduce pollution of the Baltic Sea area caused by discharges through rivers, estuaries, outfalls and pipelines, dumping and shipping operations as well as through airborne pollutants. The 1974 Convention entered into force in 1980 while the 1992 amendments entered into force in 2000. The European Community acceded to the Convention with the adoption of **Council Decision 94/156/EC**¹³ and **Council Decision 94/157/EC**¹⁴.

The Parties to the Convention undertake to ban the use of a series of hazardous substances in the Baltic Sea area. They must also take all appropriate measures and work together to control and minimise pollution from land-based sources.

With regard to pollution from ships, the Parties must take a series of measures to protect the Baltic Sea area against pollution linked to spillage of hydrocarbons and other harmful substances and the discharge of waste water and sewage from ships. This may be done through the establishment of international rules, assistance with ship inspections, application of standard rules on the transport of harmful substances and the discharge of waste water, etc. Specific measures relating to the creation of adequate waste reception facilities especially for pleasure craft must also be adopted.

The Contracting Parties must ban the dumping of waste in the Baltic Sea area, except in the case of dredged material, provided a special permit has been issued by the appropriate national authority and in cases where the safety of human life or of a ship or an aircraft at sea is threatened by the complete destruction or total loss of the ship or the aircraft, if dumping appears to be the only way of averting the threat.

11 Convention on the Protection of the Marine Environment in the Baltic Sea Area (Helsinki Convention) of 1974 as amended

12 Denmark, Germany, Sweden, Estonia, Finland, Latvia, Lithuania, Poland and Russia

13 Council Decision 94/156/EC of 21 February 1994 on the accession of the Community to the Convention on the Protection of the Marine Environment of the Baltic Sea Area (1974 Helsinki Convention)

14 Council Decision 94/157/EC of 21 February 1994 on the conclusion, on behalf of the Community, of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention as revised in 1992)

Each Party must take all the necessary measures to prevent pollution resulting from exploration or exploitation of the sea bed or its subsoil. They must cooperate in the field of scientific and technological research, and undertake jointly to adopt rules concerning responsibility for damage resulting from infringements of the Convention.

The Convention sets up a Baltic Marine Environment Protection Commission known as HELCOM whose function is to monitor the implementation of the Convention. One of the most important duties of HELCOM is to make Recommendations on measures to address certain pollution sources or areas of concern. HELCOM has adopted some 200 Recommendations for the protection of the Baltic Sea. These Recommendations are to be implemented by the Contracting Parties through their national legislation. Another important duty of HELCOM is to follow up the implementation of the Convention and the HELCOM Recommendations.

The Barcelona Convention¹⁵

The Barcelona Convention of 1976, amended in 1995, and the Protocols drawn up in line with this Convention aim to reduce pollution in the Mediterranean Sea and protect and improve the marine environment in the area, thereby contributing to its sustainable development. Contracting Parties are all countries with a Mediterranean shoreline as well as the European Union¹⁶.

A number of Council Decisions have been adopted to allow the European Community to accede to the Convention and its subsequent Protocols. **Council Decision 1999/802/EC** concerns a number of amendments to the Convention which were accepted by the Community in 1995. These amendments concern the extension of the Convention's geographical field of application to the coast, the application of the precautionary and "polluter pays" principles, the obligation on the Parties to carry out and promote impact assessments, protect and preserve biological diversity as well as combat pollution from cross-border movements of dangerous waste, and access to information and public participation. Furthermore, in 2002 the Community signed a sixteenth Protocol to the Barcelona Convention to which it acceded through **Council Decision 2004/575/EC**.

The Contracting Parties to the Convention must individually or jointly take all appropriate measures to protect and improve the Mediterranean marine environment. The aim of these measures is to contribute to sustainable development and to prevent, abate, combat and, as far as possible, eliminate pollution in this area. Four particular types of pollution are outlined within the Convention:

- pollution caused by dumping from ships and aircraft;
- pollution from ships;
- pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil;

¹⁵ Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft (Barcelona Convention) 1976 as amended

¹⁶ Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, European Community, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Morocco, Serbia and Montenegro, Slovenia, Spain, Syria, Tunisia, and Turkey.

- pollution from land-based sources.

OSPAR Convention¹⁷

The OSPAR Convention guides international cooperation on the protection of the marine environment of the North-East Atlantic. Work under the Convention is managed by the OSPAR Commission, made up of representatives of the Governments of 15 Contracting Parties and the European Commission, representing the European Community¹⁸. The Community is a signatory to the OSPAR Convention by virtue of **Council Decision 98/249/EC**.

The scope of the OSPAR Convention was initially limited to four main areas defined in four Annexes: on the prevention and elimination of pollution from land-based sources, by dumping or incineration, and from offshore sources, and on the assessment of the quality of the marine environment. A new Annex V was prepared in 2000, on the protection and conservation of the ecosystems and biological diversity of the maritime area. Under it, the Contracting Parties must adopt the necessary measures in order to protect and conserve the ecosystems and the biological diversity of the maritime area, and to restore, where practicable, maritime areas which have been adversely affected. This was approved in **Council Decision 2000/340/EC**.

To meet their obligations, the Parties to the Convention must observe two principles:

- the **precautionary principle**, by virtue of which preventive measures are to be taken when there are reasonable grounds for concern that substances or energy introduced, directly or indirectly, into the marine environment may bring about hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea, even when there is no conclusive evidence of a causal relationship between the inputs and the effects;
- the **polluter pays principle**, by virtue of which the costs of pollution prevention, control and reduction measures are to be borne by the polluter.

¹⁷ Convention for the protection of the marine environment of the North-East Atlantic, (Paris Convention) dated 22 September 1992

¹⁸Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom.

2.1.6 Navigation Law

A. International Law

Introduction

The IMO is responsible for the introduction of a number of fundamental Conventions relating to navigation and safety at sea issues. The following section details the effects of the most important Conventions together with a brief analysis of other Conventions that have a peripheral effect on navigation. This is not an exhaustive account of the international regulations affecting navigation but serves to illustrate the nature and extent to which the IMO influences policy in this area. Further details in relation to navigation and security issues may be consulted in Sub-Task 2 (2.1.6.2) “Review of ‘monitoring’ Directive 2002/59/EC and associated initiatives” and Sub-Task 3 “Interaction of international and national legislation for shipping safety and security” (2.1.6.3)

International Convention for Safety of Life at Sea (SOLAS) 1974

The International Convention for Safety of Life at Sea, more commonly known as SOLAS puts in place an international basis for the safe operation of merchant ships.

Aim of the Convention

SOLAS aims to ensure the safety of life at sea by setting down minimum safety standards in respect of the construction of ships, the equipment used on ships and the actual operation of ships. A number of certificates, which are detailed in SOLAS, are to be issued by signatory states to vessels if these requirements are complied with. In fact, SOLAS makes it a responsibility of such states to ensure that ships which operate under their flag comply with these requirements.

Summary of the key provisions

SOLAS is divided up into a number of chapters dealing with different aspects of safety at sea. The following is a brief summary of some of the key provisions set out in these chapters:

- regulations concerning the survey of ships and the issuing of certificates confirming compliance with same;
- regulations dealing with the control of ships in ports;
- the safety standards needed in respect of machinery and electrical installations;
- regulations detailing the fire safety provisions for all ships and specific measures for certain vessels;
- requirements for life-saving appliances and arrangements;
- undertakings which contracting governments must sign up to;
- requirements that all ships carry radio communications equipment;
- certain navigation safety services which should be provided by contracting governments;

- details the types of cargo which require special care to be taken with them particularly in respect of their storage;
- requirement that the carriage of dangerous goods must meet the standards laid down in the International Maritime Dangerous Goods Code;
- requirements for nuclear-powered ships; and
- mandatory compliance with the International Safety Management Code.

In particular, Chapter V of the SOLAS Convention entitled “Safety of Navigation” identifies certain navigation safety services which should be provided by Contracting Governments. The subjects covered include the maintenance of meteorological services for ships; ice patrol services; routing of ships and the maintenance of search and rescue services.

This Chapter also includes a general obligation for masters to provide assistance to those in distress and for Contracting Governments to ensure that all ships shall be sufficiently and efficiently manned from a safety point of view. It also makes mandatory the carriage of voyage data recorders (VDRs) and automatic ship identification systems (AIS) for certain ships.

International Hydrographic Organisation

Under the new Regulation 9 of Chapter V, the Contracting Governments of SOLAS are now required to provide and maintain hydrographic services and products. Hydrography deals with the measurement and description of features of the sea and coastal areas for navigational purposes. SOLAS further advises that in order to achieve the greatest degree of uniformity and standardisation in collection techniques, data management and product display, the Contracting Governments should “take into account, whenever possible, relevant international resolutions and recommendations” adopted by the International Hydrographic Organisation (IHO).

Convention on the International Maritime Satellite Organization (INMARSAT) 1976

Inmarsat is an international maritime satellite system aimed at improving maritime communications, thereby assisting in improving distress and safety of life at sea communications, the efficiency and management of ships, maritime public correspondence services, and radio-determination capabilities.

Inmarsat’s obligation to provide maritime distress and safety services via satellite were enshrined within the 1988 amendments to the SOLAS Convention which introduced the Global Maritime Distress and Safety System (GMDSS). Ships sailing in specified sea areas are required to carry Inmarsat communications equipment for distress and safety calls and to receive navigational warnings.

International Association of Marine Aids to Navigation and Lighthouse Authorities – (IALA)

The purpose of IALA is to ensure that seafarers are provided with effective and harmonised marine aids to navigation services worldwide to assist in the safe navigation of shipping and protection of the environment. Taking into account the needs of mariners, developments in technology and the requirements and constraints of aids to navigation authorities, a number of technical committees have been established bringing together experts from around the world. The work of the committees is aimed at developing common standards workshops through publications of IALA Recommendations and Guidelines.

SOLAS Chapter V also sets out the international requirements in relation to Vessel Traffic Services (VTS). IALA have issued Recommendations with regard to VTS which augment the SOLAS provisions and ensure uniformity of effect. In addition, IALA is the international organisation that provides the standards for VTS. IALA's VTS Committee periodically publishes hardware standards, policy and training standards, the VTS manual.

Load Lines Convention 1966

Aims of the Convention

The Load Lines Convention aims to improve the safety of ships by outlining minimum standards for the safe loading of ships in three main areas while having regard to the dangers which might arise in different zones at times. These areas include:

1. the freeboards of ships which are determined by subdivision and damage stability calculations;
2. external weather-tight; and
3. watertight integrity. A number annexes to the Convention detail additional safety measures, in respect of the watertight integrity of ships' hulls below the freeboard deck.

Obligations of Contracting States

Each contracting state is obliged to survey the vessels which operate under its flag. This survey requires that the vessel's load lines, depending on the cargo it is carrying, is marked on each side of the ship together with its deck line. If the vessel is deemed to be in compliance then the relevant authority in the contracting state can issue a load line certificate to the vessel.

The Convention is applicable to "all ships engaged on international voyages" save for war ships, fishing vessels, pleasure vessels not trading and ships who are navigating in certain seas.

International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978

STCW details minimum standards relating to training, certification and watchkeeping for seafarers on an international level and the provision of certificates to those who comply with such minimum standards. The Convention also lays down certain regulations in the area of port State control.

A certificate will be issued to individuals who hold different positions on board a ship once the minimum standards relevant to that position have been attained. Some of the different positions include:

- the Master;
- Deck Officers;
- Engineer Officers; and
- Radio Officers.

Once a seafarer attains a certificate for his position there is an obligation to maintain those standards and retesting applies at different points again depending on the nature of the certificate awarded.

Convention on the International Regulations for Preventing Collisions at Sea, (COLREGs) 1972

The COLREGS are a set of international rules adopted by members of the international community to regulate the prevention of collisions at sea. To this end there are 38 rules in total which are divided into five sections. These sections are:

Part A - General;

Part B - Steering and Sailing;

Part C - Lights and Shapes;

Part D - Sound and Light signals; and

Part E - Exemptions.

Brief analysis of each “Part”

Part A provides a “general” introduction and states that these rules “apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels”. In particular, this section stipulates those to whom the rules apply.

Part B details the rules relevant to vessels in the following circumstances:

- in any condition of visibility;
- while in sight of another; and
- when there is restricted visibility.

Part C stipulates the requirements in respect of the lighting of different categories of vessels from sunrise to sunset. There are also four annexes to the COLREGS which set out technical requirements

in respect of the lights and shapes which should be read in conjunction with the rules set out in Part C.

Part D sets out the requirements in respect making signals using light and sound.

Part E details that “any vessel (or class of vessels) provided that she complies with the requirements of the International Regulations for Preventing Collisions at Sea, 1960, the keel of which is laid or which is at a corresponding stage of construction before the entry into force of these Regulations” is exempt from some of the rules associated with sound and light signals.

International Convention for Safe Containers 1972

The Convention for Safe Containers stipulates certain tests which containers must undergo and outlines minimum strength requirements of containers to ensure that the greatest level of safety is ensured during the transportation and handling of such containers.

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, (SUA) 1988

The main purpose of the Convention is to provide for a comprehensive approach to the suppression of unlawful acts committed against the safety of maritime navigation which endanger innocent human lives, jeopardize the safety of persons and property, seriously affect the operation of maritime services and thus are of grave concern to the international community as a whole. The Convention aims to ensure that appropriate action is taken against persons committing unlawful acts against ships. These include the seizure of ships by force; acts of violence against persons on board ships; and the placing of devices on board a ship which are likely to destroy or damage it. The convention obliges Contracting Governments either to extradite or prosecute alleged offenders.

The 1988 Convention was amended by the 2005 Protocol which has broadened the range of offences. Included are the offences of unlawfully and intentionally injuring or killing any person in connection with the commission of any of the offences; attempting to commit an offence; participating as an accomplice and organizing or directing others to commit an offence.

International Convention on Maritime Search and Rescue (SAR) 1979

Although the obligation of ships to go to the assistance of vessels in distress was enshrined both in tradition and in international treaties (such as SOLAS), there was no international system covering search and rescue operations until the adoption of the SAR Convention. The Convention establishes preparatory measures which should be taken, including the establishment of rescue co-ordination centres and sub-centres. It outlines operating procedures to be followed in the event of emergencies or alerts and during SAR operations. This includes the designation of an on-scene commander and his duties.

Parties to the Convention are required to establish ship reporting systems, under which ships report their position to a coast radio station. This enables the interval between the loss of contact with a vessel and the initiation of search operations to be reduced. It also helps to permit the rapid determination of vessels which may be called upon to provide assistance including medical help when required.

The Convention was amended in 1998 and 2004. These amendments clarify the responsibilities of Governments and puts greater emphasis on the regional approach and co-ordination between maritime and aeronautical SAR operations.

Convention on Facilitation of International Maritime Traffic (FAL) 1965

The FAL Convention's main objectives are to prevent unnecessary delays in maritime traffic, to aid co-operation between Governments, and to secure the highest practicable degree of uniformity in formalities and other procedures. In its Annex, the Convention contains "Standards" and "Recommended Practices" on formalities, documentary requirements and procedures which should be applied on arrival, stay and departure to the ship itself, and to its crew, passengers, baggage and cargo.

The Convention provides that any Contracting Government which finds it impracticable to comply with any international standard, or deems it necessary to adopt differing regulations, must inform the Secretary-General of IMO of the "differences" between its own practices and the standards in question. The same procedure applies to new or amended standards. In the case of recommended practices, Contracting Governments are urged to adjust their laws accordingly but are only required to notify the Secretary-General when they have brought their own formalities, documentary requirements and procedures into full accord.

International Convention on Tonnage Measurement of Ships, 1969

The Convention establishes a universal tonnage measurement system for gross and net tonnages. The Convention meant a transition from the traditionally used terms gross register tons (grt) and net register tons (nrt) to gross tons (GT) and net tons (NT).

Gross tonnage forms the basis for manning regulations, safety rules and registration fees. Both gross and net tonnages are used to calculate port dues. The gross tonnage is a function of the moulded volume of all enclosed spaces of the ship. The net tonnage is produced by a formula which is a function of the moulded volume of all cargo spaces of the ship.

International Convention on Salvage, 1989

Historically, the law governing salvage incorporated the “no cure, no pay” principle under which a salvor is only rewarded for services if the saving operation is successful. This resulted in situations where a salvor would receive no compensation where they failed to save the ship or cargo despite perhaps preventing major environmental incidents because of their actions.

The 1989 Convention attempted to remedy this deficiency by making provision for an enhanced salvage award taking into account the skill and efforts of the salvor in preventing or minimizing damage to the environment. This “special compensation” may consist of up to 100% of the salvor’s costs where environmental damage has been minimised or prevented. This may be denied or reduced in situations where the salvor has been negligent in his actions and has failed to prevent or minimise environmental damage. Payment of the reward is made by the vessel and other property interests in proportion to their respective salvaged values.

B. European Law

Introduction

Various aspects of navigation law are heavily regulated at a European level. A complete analysis of the legislation in question is beyond the scope of this document, however, the following is a brief note on some of the more significant pieces categorised as follows:

- Safety at Sea and General Health and Safety;
- Port State Control; and
- Certification of Seafarers.

Safety at Sea and general Health and Safety

- **Council Regulation (EEC) No 613/91** details in one document the obligations under various international instruments in respect of the transfer of ships between registers in the Community to ensure harmonisation in their implementation.
- **Council Decision 92/143/EEC** regulates radio navigation systems in Europe.
- **Council Directive 94/57/EC** sets out the obligations of Member States with regard to the inspection, survey and certification of ships in compliance with international conventions in the area of safety at sea.

- **Council Directive 96/98/EC** sets Community standards on the safety of equipment required on board ships to reflect the provisions of international conventions such as SOLAS and to ensure the free movement of marine equipment within the Community.

The Directive applies to:

- equipment for use on board a new Community ship, regardless of where it was constructed;
- equipment placed on board an existing Community ship at the time of the entry into force of the Directive,

The type of marine equipment to which the Directive applies is set out in the annex to the Directive.

- **Council Directive 98/18/EC** aims to improve the safety of maritime passenger transport. The Directive applies to three specific categories of vessels regardless of their flag once they are engaged in domestic voyages. The Directive sets out the general safety requirements which are applicable to these vessels while also providing for the possibility of setting out further safety requirements, equivalents, exemptions and safeguard measures which may be implemented provided the Commission is given prior notice.
- **Council Directive 2001/96/EC** seeks to harmonise the requirements and procedures for the safe loading and unloading of bulk carriers. To this end the directive:
 - lays down the suitability requirements and procedures for bulk carriers and terminals;
 - stipulates the duties to be performed by both the master of the ship and the terminal to ensure the safe loading and unloading of the bulk carriers; and
 - regulates the exchange of information between the master of the ship and the terminal in respect of the loading and unloading.
- **Council Directive 2003/24/EC** details new safety rules and standards for passengers on board passenger ships and high-speed passenger craft engaged in domestic voyages. Included in these safety rules is the obligation on the owners of such vessels to take the necessary measures to ensure that persons with reduced mobility can gain safe access.
- **Regulation (EC) No 725/2004** establishes a system for the harmonised interpretation and implementation of maritime security as detailed in SOLAS and established in the International Ship and Port Facility Security Code (ISPS Code).
- **Council Directive 2005/65/EC** aims to further enhance maritime security in Member States as laid down in Regulation EC No 725/2004 by introducing a port security system. The combined effect of the Directive and the Regulation is hoped to provide a comprehensive security system, protecting all those who use ports, their vessels and equipment, the port themselves and the areas around them.

Under the Directive, each Member State has certain obligations. The following are just a sample of those obligations:

1. develop, maintain and update as is necessary port security plans;
2. monitor the implementation of the security plans to ensure its success, and establish penalties for failure to conform with the plan; and
3. for every Member State port, an “authority” must be appointed who will have the responsibility for the operation of all post security measures.

The level of security adopted by each port will depend on the level of “perceived risk” to the port. There are three levels of security for the port security authority to choose from. Each Member State must relay the information relevant to the level chosen and notify of any changes to it.

- **Council Directive 2002/59/EC** establishes a vessel traffic monitoring and information system within the EU. The aim of which is to enhance the safety and efficiency of maritime traffic, improve the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations, and to contribute to better prevention and detection of pollution by ships. Member States must monitor and take all necessary and appropriate measures to ensure that masters, operators and agents of ships, as well as shippers or owners of dangerous polluting goods carried on board such ships, comply with the requirements under this Directive. This Directive has been amended by **Directive 2009/17** which has introduced further mandatory obligations for the Member States. Greater detail on the scope of **Directives 2002/59** and **Directive 2009/17** may be consulted in Sub-Task 2.1.6.2 entitled “Review of ‘Monitoring’ **Directive 2002/59** and associated initiatives”.

- **Regulation (EC) No 1406/2002** is the governing legislation of the European Maritime Safety Agency (EMSA). The EMSA was established to provide Member States as well as the Commission with technical and scientific support in the area of maritime safety. Through this the Directive aims to ensure the correct implementation of Community legislation in the area of maritime security and to evaluate the effectiveness of the existing legislation. The Directive details tasks which the EMSA is to be responsible for. Amongst some of the more significant tasks are the following:
 - to support the Commission in the development of Community legislation in the area of maritime safety particularly as changes occur on an international legislative level;
 - to assist the Commission with any legal obligations placed on it in the area of marine safety;
 - to support Member States in the implementation of Community legislation in this area; and
 - to support the Commission in the production of a bi annual publication relating to ships that have been refused access to Community ports.

In order to assist the EMSA in carrying out its duties under the Directive, it is entitled to make visits to individual Member States as is necessary. Following each visit, EMSA will draw up a report and send it to the Commission and to the Member State concerned detailing their findings.

3. Port State Control

- **Council Directive 95/21/EC** aims to harmonise the implementation of international law in the area of ship safety, shipboard living and working conditions in respect of ships which use Community ports and sail in Member States' jurisdictional waters.

The Directive requires Member States to establish and maintain "competent authorities" for the inspection of ships in their ports or in the waters under their jurisdiction so as to ensure compliance with the international standards in question.

Some of the obligations of the Member States include:

- to inspect at least 25 % of the ships flying other countries' flags which enter their ports, however those which have been inspected within the previous six months are exempt;
- to carry out greater controls on
 - oil tankers within five years or less of the date of phasing out;
 - bulk carriers older than 12 years of age;
 - passenger ships;
 - gas and chemical tankers, over ten years old counting from the date of construction shown on the ship's safety certificate; and
- to ensure the rectification of any deficiencies which are identified during the inspection.
- **Council Directive 96/40/EC** establishes a common model for an identity card for inspectors carrying out Port State Control.

Certification of Seafarers

- **Council Directive 2001/25/EC** establishes a Community wide system for the implementation of the Convention on Standards of Training, Certification and Watchkeeping for Seafarers by detailing a minimum level of training for seafarers.

The Directive applies to seafarers who are serving on board a seagoing ship which is flying a flag of a Member State, there are however, certain stated exceptions.

The Directive stipulates the training and the necessary standards of competence which must be met by seafarers before they can be issued with a certificate to perform certain functions as per the category of seafarer they fall into. Some of the categories of seafarer to which these rules apply include:

- masters;
- chief mates;
- deck officers and engineer officers;
- chief engineer officers and second engineer officers; and
- personnel responsible for radio communications.

The relevant certificates can only be issued by the “competent authorities” of each Member State. The competent authorities will issue a certificate when they are satisfied that the national standards in respect of medical fitness and the requirements under the Directive are met.

C. Irish Law

Merchant Shipping Acts – Safe Operation of Merchant Ships

Introduction

The regulation of the safe operation of merchant ships in Ireland is dealt with in the Merchant Shipping Acts. These Acts adopt the international standards in this area which are set out in the International Convention for Safety of Life at Sea (SOLAS).

The Rules

The Merchant Shipping Acts set out five categories of rules, which include:

1. hull, equipment and machinery rules;
2. life-saving appliances rules;
3. radio rules;
4. rules for direction finders; and
5. collision regulations.

Hull, Equipment and Machinery Rules

The regulation in this area is dealt with in two separate acts. They are as follows:

1. Pursuant to Section 10 of the Merchant Shipping Act 1952 (as amended), the Minister for Marine has the authority to establish “construction rules” for the hull, equipment and machinery of passenger vessels registered in the State.
2. Pursuant to Section 3 of the Merchant Shipping Act 1966, a similar procedure is laid down in respect of sea-going ships registered in the State of 500 tons of gross tonnage or more, and any other sea-going ship registered in the State as may be specified by order by the Minister or ships which are not registered in the State but are within a port of the State.

Rules for Life-saving appliances

Pursuant to section 11 of the 1952 Act (as amended), rules for life-saving appliances may be made by the Minister. These rules apply to ships registered in the State and ships which are not registered in the State while they are within a port of the State.

Section 13 of the 1952 Act, states that a surveyor of ships may inspect any ship to ensure that the life-saving appliances rules are being fully complied with. Should the surveyor find breaches, he will give a written notice to the master or owner of the ship, indicating how to rectify this breach. A copy of the written notice is also forwarded to the chief officer of custom of any port at which the ship may seek to obtain a clearance. The ship shall be detained and will not be entitled to the necessary clearance until such time as a certificate is produced by the surveyor, showing that the matter has been rectified.

Radio Rules

Pursuant to Section 15 of the 1952 Act (as amended), the Minister has the authority to make rules concerning radio equipment. As above, these rules apply equally to ships registered in the State and ships which are not registered in the State while they are within a port of the State.

Sections 15(7) and (8) set out identical procedures in respect of inspection, detention and awarding of certificates as applies in respect of life-saving appliances.

Rules for a Direction - Finder

Pursuant to section 18 of the 1952 Act (as amended), a direction-finder may be required by rules made by the Minister on board ships registered in the State, and other ships while they are within any port in the State.

Section 23 of the 1952 Act permits owners of a ship registered in the State to apply to the Minister for a radio certificate if they are in compliance with radio rules and rules for direction finders.

Collision Regulations

Collision regulations are dealt with by section 418 of the Merchant Shipping Act 1894 (as amended)

Certificates

Certificates are issued to vessels registered in the State which, once surveyed are deemed to comply with the legal requirements which pertain to the vessel. However, if at any point after the certificate has been issued, there is a change to the items dealt with in the certificate they must notify the Minister immediately. The Master or owner of a ship who takes a ship on a voyage without the appropriate certificate is guilty of an offence.

The issue of certificates also facilitates the task of surveyors within the Community. EC Directive on Port State Control established certain rules in relation to surveyors which includes verification of certificates issued to the ships by other surveyors.

The Merchant Shipping (Load Lines) Act 1968 - Load Lines Rules

The Merchant Shipping (Load Lines) Act 1968 implements the International Load Lines Convention which details a set of standards for the safe loading of ships.

The Rules

Section 3 of the 1968 Act sets out a number of load lines rules concerning:

- the surveying and periodical inspection of ships;
- the determination of freeboards to be assigned from time to time to ships;
- the designation on those ships of the deck which is to be taken as the freeboard deck, and the indication of that deck by a particular ;
- the determination of lines on the ships, in accordance with the assigned marks and freeboard, indicating the maximum depths to which the ships may be loaded; and
- the hulls, superstructures, fittings and appliances of ships to which the Act applies and the keeping of a record of those requirements.

Compliance with the Rules

The load lines rules apply to all ships registered in the State with some stated exceptions. It is an offence for a ship to commence a voyage unless these rules are fully complied with.

Pursuant to Section 4 of the 1968 Act, a ship may be detained if it has not been surveyed in accordance with the load lines rules, and is not marked with a deck line and with load lines.

Non State Registered Ships

Pursuant to section 14 of the 1968 Act, a ship which is not registered in the State cannot embark on a voyage from any port in the State, unless they have been:

1. surveyed in accordance with the load lines rules;
2. marked with the load lines and the deck lines; and
3. comply with the conditions of assignment of freeboard and with the general standards of information required by the rules.

Certificates

Certificates are issued once a ship has been surveyed and marked in accordance with the rules issued by the Minister. There are two forms of certificates, they include:

1. an International Load Line Certificate; and
2. an Irish Load Line Certificate.

Which certificate is issued depends on the tonnage of the ship. Once a ship has been issued with a certificate, the Master of a ship must produce it to the Custom Officer from whom he seeks clearance. A ship will not be granted clearance unless the certificate is presented and so will be detained until it is produced.

Certification of Seamen

The Merchant Shipping (Certification of Seamen) Act 1979 implements into Irish law the standards set out in the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers.

Application of Act

Pursuant to Section 2 of the 1979 Act, all ships registered in the State and “any ship registered elsewhere which carries passengers between places in the State or on voyages which begin and end at the same place in the State and on which the ship calls at no place outside the State” are bound by the terms of the 1979 Act.

Regulations

Pursuant to Section 3 of the 1979 Act, the Minister for Tourism and Transport is enabled to:

1. make regulations concerning the numbers and categories of personnel on board ships;
2. issue of certificates of competency; and
3. provide for the conduct of examinations in respect of the certificate and the appointment and remuneration of examiners for such examinations.

Since the enactment of the 1979 Act, the Minister has made numerous regulations in respect of the categories of personnel, an examination of which is beyond the remit of this piece however, it should be noted that it is a legal obligation for each individual who falls within a regulated category to comply with those requirements. It is an offence not to or to go to sea without first being issued with the necessary certificate.

The Commissioners of Irish Lights

The Commissioners of Irish Lights (CIL) are responsible for marine aids to navigation. Part XI of the Merchant Shipping Act 1894 is the legislative basis for the provision of marine aids to navigation. Section 638 of the 1894 Act, details the responsibilities of CIL. These responsibilities include:

1. the erection or placement any lighthouse, with all requisite works, roads and appurtenance;
2. the addition, alteration or removal any lighthouse;
3. the erection or placement of any buoy or beacon, or alteration or removal of any buoy or beacon; and
4. the variation of the character of any lighthouse or the mode of exhibiting lights therein.

Regulation of traffic in harbours

The Harbours Act 1996 places certain responsibilities on the Harbour Masters of Irish Ports with regard to the regulation of traffic in the harbour, and the protection of persons and property in the harbour.

Appendix-1 References & Internet Links

(A) Relevant International Organisations

- **BIMCO: Baltic and International Maritime Council**

<https://www.bimco.org/>

BIMCO is an independent international shipping association, with a membership composed of ship owners, managers, brokers, agents and many other stakeholders with vested interests in the shipping industry. BIMCO is accredited as a Non-Governmental Organisation (NGO), holds observer status with a number of United Nations organs and is in close dialogue with maritime administrations, regulatory institutions and other stakeholders within the EU and internationally.

- **CMI: Comite Maritime International**

<http://www.comitemaritime.org/>

The CMI is an international non-Governmental organisation which promotes the unification of maritime law worldwide. Founded in 1897, the CMI was responsible for the drafting of numerous international conventions including the Hague Rules (International Convention on Bills of Lading), the Visby Amendments (amending the Hague Rules) and the Salvage Convention.

In addition to its continuing work on maritime conventions, the CMI is involved in the formation and maintenance of codes of maritime and related commercial practice. In 1990 the CMI adopted uniform rules for Seawaybills and Electronic Bills of Lading. The CMI is also responsible for the revision and updating of the York-Antwerp Rules for adjustment of general average in insurance matters.

While many of the functions of the CMI have been absorbed by the International Maritime Organisation (IMO), the CMI continues to operate in an advisory capacity and has drafted conventions for consideration and adoption for the IMO and UNCTAD.

- **EMSA: European Maritime Safety Agency**

<http://www.emsa.europa.eu/>

The European Maritime Safety Agency, was created in the aftermath of the *Erika* tanker disaster under **Regulation (EC) 1406/2002** and is one of the key EU level initiatives aimed at improving maritime safety throughout the EU. The Agency's main objective is to provide technical and scientific assistance to the European Commission and Member States in the proper development and implementation of EU legislation on maritime safety, pollution by ships and security on board ships. To do this, one of EMSA's most important supporting tasks is to improve cooperation with, and between, Member States in all key areas. In addition, the Agency has operational tasks in oil pollution preparedness, detection and response. As a body of the European Union, the Agency sits at the heart of the EU maritime safety network and collaborates with many industry stakeholders and public bodies, in close cooperation with the European Commission.

- **IALA: International Association of Marine Aids to Navigation and Lighthouse Authorities**

<http://www.iala-aism.org>

IALA is a non-governmental organisation which has consultative status with inter-governmental and international organisations such as the IMO and IHO. The purpose of IALA is to ensure that seafarers are provided with effective and harmonised marine aids to navigation services worldwide to assist in the safe navigation of shipping and protection of the environment.

- **IHO: International Hydrographic Organisation**

<http://www.iho-ohi.net/english/home/>

The IHO is an Inter-Governmental Organisation with an agreement of co-operation with the IMO. The IHO and the IMO jointly adopt measures with a view to encouraging greater international cooperation and coordination for the transition to electronic nautical charts. Both organisations strive to increase the coverage of hydrographic information on a global basis, especially in areas of international navigation and ports and where there are vulnerable or protected marine areas.

- **ILO: International Labour Organisation**

<http://www.ilo.org/global/lang--en/index.htm>

The ILO, as part of the UN, is an international multi-lateral organisation with a tripartite governing structure — representing governments, employers and workers. Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue in handling work-related issues.

The ILO is responsible for drawing up and overseeing international labour standards. ILO Conventions and Recommendations cover a broad range of subjects concerning work, employment, social security, social policy and related human rights.

The ILO drafted the Maritime Labour Convention in 2006. This Convention sets out seafarers' rights to decent conditions of work and helps to create conditions of fair competition for shipowners. It is intended to be globally applicable, easily understandable, readily updatable and uniformly enforced.

The Maritime Labour Convention, 2006 has been designed to become a global legal instrument that, once it enters into force, will be the “fourth pillar” of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organisation (IMO) such as the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended (STCW) and the International Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

- **IMO: International Maritime Organisation**

<http://www.imo.org/>

The IMO, a specialised agency of the United Nations, was created in 1948 and is dedicated to the international regulation of shipping matters. The IMO's primary purpose is to develop and maintain a comprehensive regulatory framework for shipping and its remit today includes safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping. The work of the IMO is conducted through five committees and these are supported by technical subcommittees. Member organisations of the UN may observe the proceedings of the IMO and observer status is also granted to qualified non-governmental organisations.

The IMO is the source of approximately 60 legal instruments that guide the regulatory development of its member states to improve safety at sea, facilitate trade among seafaring states and protect the maritime environment.

The IMO regularly enacts regulations, which are broadly enforced by national and local maritime authorities in member countries, the most well known of these include the International Convention for the Safety of Life at Sea (SOLAS), the International Regulations for Preventing Collisions at Sea (COLREG), the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

The IMO has also enacted a Port State Control (PSC) authority, allowing domestic maritime authorities such as coast guards to inspect foreign-flag ships calling at ports of the many port states. Memoranda of Understanding (protocols) were signed by some countries unifying Port State Control procedures among the signatories.

- **IOC: Intergovernmental Oceanographic Commission**

<http://ioc-unesco.org>

The IOC was created in 1960 to promote international cooperation and coordinate programmes in research, sustainable development, protection of the marine environment, capacity-building for improved management, and decision-making. The IOC helps improve operational oceanography, weather and climate forecasts and monitoring and support the sustained observing needs of the UN Framework Convention on Climate Change (UNFCCC). The IOC is the recognized competent International Organisation in the fields of Marine Scientific Research (Part XIII) and Transfer of Marine Technology (Part XIV) of the United Nations Convention on the Law of the Sea (UNCLOS).

- **IMSO: International Mobile Satellite Organisation**

<http://www.imsso.org>

IMSO is an intergovernmental body established to oversee the application of the international maritime satellite system, Inmarsat. Inmarsat is aimed at improving maritime communications, thereby assisting in improving distress and safety of life at sea communications, the efficiency and management of ships, maritime public correspondence services, and radio-determination capabilities. The IMSO aims to ensure that Inmarsat continues to meet its public service obligations, including obligations relating to the Global Maritime Distress and Safety System (GMDSS). IMSO is an observer at IMO meetings.

- **UNCITRAL: United Nations Commission on International Trade Law**

<http://www.uncitral.org/>

UNCITRAL is a subsidiary body of the General Assembly of the United Nations with the general mandate to further the progressive harmonization and unification of the law of international trade. UNCITRAL has prepared a wide range of conventions, model laws and other instruments dealing with the substantive law that governs trade transactions or other aspects of business law which have an impact on international trade. Examples are the model law on electronic signatures, and the use of electronic negotiable documents.

UNCITRAL deals with the laws applicable to private parties in international transactions and is not involved with "state-to-state" issues. Membership of UNCITRAL is structured so as to be representative of the world's various geographic regions and its principal economic and legal systems.

- **UNCTAD: United Nations Conference on Trade and Development**

<http://www.unctad.org>

UNCTAD is a permanent intergovernmental body established within the General Assembly of the United Nations responsible for trade, investment, and development issues.

UNCTAD's goals are to maximize the trade, investment and development opportunities of developing countries and assist them in their efforts to integrate into the world economy on an equitable basis. The creation of the conference was based on concerns of developing countries over the international market, multi-national corporations, and great disparity between developed nations and developing nations. UNCTAD also has responsibility in relation to international trade and commodities, globalisation and development, investment and enterprise, technology and logistics.

In the context of maritime matters, UNCTAD publishes its "Review of Maritime Transport" published annually since 1968. It reports on the worldwide evolution of shipping, ports and multimodal transport related to the major traffics of liquid bulk, dry bulk and containers.

- **UNDOALOS: United Nations Division for Ocean Affairs and the Law of the Sea**
<http://www.un.org/Depts/los/index.htm>

The UN is actively engaged in encouraging and guiding the development and adoption of the United Nations Law of the Sea Convention (UNCLOS). It monitors developments as they relate to the Convention and provides assistance to States in either the ratification or the implementation process.

UNDOALOS helps to coordinate the UN's activities and programmes in the area of marine affairs. It is active in assisting and advising States in the integration of the marine sector in their development planning. It also responds to requests for information and advice on the legal, economic and political aspects of the Convention and its implications for States. Such information is used by States during the ratification process, in the management of the marine sector of their economies and in the development of a national sea-use policy.

- **UNECE: United Nations Economic Commission for Europe**
<http://www.unece.org>

UNECE promotes pan-European integration in economic and sectoral issues. It gives focus to United Nations global mandates in the economic field, in cooperation with other global players and key stakeholders, notably the business community. UNECE also sets out norms, standards and conventions to facilitate international cooperation within and outside the region. In particular, UNECE administers the Inland Transport Committee which is responsible for the Customs Convention on the International Transport of Goods under Cover of TIR Carnets ("TIR Convention") and the International Convention on the harmonization of Frontier Controls of Goods. It also has responsibility for the United Nations Centre for Trade Facilitation and Electronic Business (UNCEFACT) which are maintaining and publishing recommendations and standards reflecting best practices in trade and transport procedures related to data and documentary requirements. Whilst UNCEFACT does not directly have a legislative role for international shipping, it has over 40 years developed and maintained specifications that are referenced by legislation and other standards.

- **WCO: World Customs Organisation**

www.wcoomd.org

WCO is the only intergovernmental organisation exclusively focused on customs matters. WCO publishes recommendations to its members on various issues among them electronic customs declaration and clearance. Its areas of competence include the development of global standards, the simplification and harmonisation of Customs procedures, trade supply chain security, the facilitation of international trade, the enhancement of Customs enforcement and compliance activities, anti-counterfeiting and piracy initiatives, public-private partnerships, integrity promotion, and sustainable global Customs capacity building programmes.

The WCO also maintains the international Harmonized System goods nomenclature, and administers the technical aspects of the WTO Agreements on Customs Valuation and Rules of Origin. In the International Convention on the simplification and harmonization of customs procedures (The Kyoto Convention) and its Protocol of amendment of 1999, principles and standards have been given for the clearance and other customs formalities, the collection and payment of duties and taxes, security, customs control and the application of information technology.

The WCO has developed the WCO Customs Data Model based on the G7 Customs Data Harmonization Initiative and the WCO Data Mapping Guide for UNEDIFACT Messages, which includes their definition of Customs data requirements and message implementation guidelines on the basis of the UNEDIFACT Customs messages.

- **WHO: World Health Organisation**

<http://www.who.int/en/>

The WHO is a specialised agency of the United Nations that acts as a coordinating authority on international public health. The WHO supports the development and distribution of safe and effective vaccines, pharmaceutical diagnostics, and drugs. In relation to maritime affairs, the WHO issues the International Health Regulation (IHR). This regulation requires ships on international voyages to provide the following documents:

- Maritime Declaration of Health. The content and basic format is defined in the IHR. This is a mandatory document which must be sent from the ship before crew are allowed on or off the ship.
- Deratting Certificate or Exemption Certificate. This document provides evidence that the ship is free from rodents and the plague vector. If the certificate is not carried, officials may require the ship to undergo deratting at arrival before being allowed to discharge/load cargo. A Deratting Exemption Certificate if it is satisfied that the ship is free from rodents e.g. oil tankers with full holds.

- **WTO: World Trade Organisation**

<http://www.wto.org>

The WTO (which replaced the General Agreement on Tariffs and Trade - GATT) is an intergovernmental organisation independent from the United Nations. The WTO deals with trade policy issues, such as trade liberalisation, abolition of trade barriers, unfair trade practices or other similar issues usually related to public law. The WTO deals with regulation of trade between participating countries; it provides a framework for negotiating and formalising trade agreements, and a dispute resolution process aimed at enforcing participants' adherence to WTO agreements which are signed by representatives of member governments and ratified by their parliaments.

The Agreement on Technical Barriers to Trade (TBT) - sometimes referred to as the Standards Code - is one of the legal texts of the WTO Agreement which has an influence on maritime trade. This obliges WTO Members to ensure that technical regulations, voluntary standards and conformity assessment procedures do not create unnecessary obstacles to trade.

- **Barcelona Commission**

<http://www.unepmap.org/index.php?module=content2&catid=001001004>

The Barcelona Commission monitors the implementation of the Barcelona Convention - (Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft 1976 as amended), and the Protocols drawn up in line with this Convention. The Convention and Protocols aim to reduce pollution in the Mediterranean Sea and protect and improve the marine environment in the Mediterranean Sea area, thereby contributing to its sustainable development. Contracting Parties are all countries with a Mediterranean shoreline as well as the European Union.

- **Helsinki Commission (HELCOM)**

<http://www.helcom.fi>

HELCOM is a regional body located in the Baltic which was set up to monitor the implementation of the Convention on the Protection of the Marine Environment in the Baltic Sea Area - Helsinki Convention (1974). One of the most important duties of HELCOM is to make Recommendations on measures to address certain pollution sources or areas of concern. HELCOM has adopted some 200 Recommendations for the protection of the Baltic Sea. These Recommendations are to be implemented by the Contracting Parties to the Convention through their national legislation. Another important duty of HELCOM is to follow up the implementation of the Convention and the HELCOM Recommendations.

- **OSPAR Commission**

<http://www.ospar.org>

The OSPAR Commission monitors the implementation of the OSPAR Convention (Convention for the protection of the marine environment of the North-East Atlantic) 1992. The OSPAR Convention influences international cooperation on the protection of the marine environment of the North-East Atlantic. The OSPAR Commission is made up of representatives of the Governments of the 15 Contracting Parties and the European Commission. The scope of the OSPAR Convention extends to the prevention and elimination of pollution from land-based sources, by dumping or incineration, and from offshore sources, and on the assessment of the quality of the marine environment. A new Annex V was prepared in 2000, on the protection and conservation of the ecosystems and biological diversity of the maritime area of the North-East Atlantic.

Appendix-1

(B) Contract

International Law

- **The Hague-Visby Rules**
<http://www.admiraltylaw.com/statutes/hague.html>
- **Hamburg Rules**
http://www.uncitral.org/pdf/english/texts/transport/hamburg/XI_d_3_e.pdf
- **CMI Rules for Electronic Bills of Lading**
<http://www.comitemaritime.org/cmidoocs/rulesebla.html>
- **CMI Uniform Rules for Sea Waybills**
<http://www.comitemaritime.org/cmidoocs/rulesaway.html>
- **Rotterdam Rules**
http://www.uncitral.org/pdf/english/workinggroups/wg_3/CTCRotterdamRulesE.pdf

Ireland

- **The Merchant Shipping Act 1947**
<http://www.irishstatutebook.ie/1947/en/act/pub/0046/index.html>
- **The Merchant Shipping (Liability of Ship-owners and others) Act 1996**
<http://www.irishstatutebook.ie/1996/en/act/pub/0035/index.html>

Appendix-1

(C) Employment

EU Regulation

- **Social Security Provisions**

- **Regulation (EC) No 883/2004** of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:166:0001:0123:EN:PDF>

- **Council Regulation EC No 859/2003** -

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0001:0003:EN:PDF>

- **Working Time Directive**

- **Council Directive 93/104/EC** of 23 November 1993 concerning certain aspects of the organization of working time (as amended)

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31993L0104&model=guichett

- **Working Time (Seafarers aboard seagoing ships registered within EU)**

- **Council Directive 1999/63/EC** concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0063:EN:HTML>

- **Working Time for Seafarers on board ships calling at Community Ports**

- **Directive 1999/95/EC** concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_d oc=Directive&an_doc=1999&nu_doc=95

- **Training Certification and Watchkeeping**

- **Directive 2008/106/EC** on the minimum level of training of seafarers (recast)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:323:0033:01:EN:HTML>
- **Directive 2001/25/EC** on the minimum level of training of seafarers
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2001&nu_doc=25
- **Directive 2002/84/EC** amending the Directives on maritime safety and the prevention of pollution from ships
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002L0084&model=guichett
- **Directive 2003/103/EC** amending **Directive 2001/25/EC** on the minimum level of training of seafarers
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0103:EN:HTML>
- **Directive 2005/23/EC** amending **Directive 2001/25/EC** on the minimum level of training of seafarers
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:062:0014:01:EN:HTML>
- **Regulation (EC) No 1406/2002** establishing a European Maritime Safety Agency
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002R1406:EN:HTML>

- **Recognition of qualifications**

- **Directive 2005/45/EC** on the mutual recognition of seafarers' certificates issued by the Member States and amending **Directive 2001/25/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0160:01:EN:HTML>
- **Directive 2005/36/EC** on the recognition of professional qualifications
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:255:0022:0142:EN:PDF>

- **Commission Regulation (EC) No 1430/2007** on the recognition of professional qualifications

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_320/l_32020071206en00030011.pdf

- **Commission Regulation (EC) No 755/2008** on the recognition of professional qualifications

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:205:0010:0012:en:PDF>

- **Communication from Commission:**

- Commission Communication - Reassessing the regulatory social framework for more and better seafaring jobs in the EU COM(2007) 591

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2007&nu_doc=591

- Commission Communication - Community guidelines on State aid to maritime transport C(2004) 43

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:013:0003:0012:EN:PDF>

- **Council Decision 2007/431/EC** authorising Member States to ratify the Maritime Labour Convention 2006

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Decision&an_doc=2007&nu_doc=431

ILO Regulation

- **Maritime Labour Convention 2006**

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/normativeinstrument/wcms_090250.pdf

- **Working Time**

- ILO Protocol to the Merchant Shipping (Minimum Standards) Convention No. 147, 1996

<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=148&chapter=1&query=%23status%3D01&highlight=on&querytype=bool&context=0>

- ILO Convention 180 Seafarers' Hours of Work and the Manning of Ships, 1996
<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=183&chapter=1&query=%23status%3D01&highlight=on&querytype=bool&context=0>
- ILO Convention 163 concerning Seafarers' Welfare at Sea and in Port, 1987
<http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=164&chapter=1&query=%23status%3D01&highlight=on&querytype=bool&context=0>

IMO Regulation

- **Training Certification and Watchkeeping**
 - International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) 1978 (as amended)
http://www.imo.org/Conventions/contents.asp?doc_id=651&topic_id=257
 - International Convention for the Safety of Life at Sea (SOLAS) 1974 (as amended)
http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647
 - International Safety Management (ISM) Code
http://www.imo.org/humanelement/mainframe.asp?topic_id=287

Port State Control

- **Council Directive 95/21/EC** concerning the enforcement of international standards for ship safety, pollution prevention and shipboard living and working conditions (Port State Control)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0021:EN:HTML>
- **Directive 2001/106/EC** (amending **Council Directive 95/21/EC**) concerning the enforcement of international standards for ship safety, pollution prevention and shipboard living and working conditions (Port State Control)
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_019/l_01920020122en00170031.pdf

Memorandum of Understanding

- Paris Memorandum of Understanding
<http://www.parismou.org/upload/pdf/MOU.%20incl.%2030th%20Amendment.pdf>

State Aid for Employment in Maritime Sector

- **Commission Regulation EC No 2204/2002** on the application of Articles 87 and 88 of the EC Treaty to State aid for employment

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:337:0003:0014:EN:PDF>

Appendix-1

(D) Competition

European Community Law

- EC Treaty Title VI Chapter 1 – Competition (Articles 81-89)
http://eur-lex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf

Community Legislation

- **Application of competition rules to maritime transport**
 - **Council Regulation 1419/2006** (repealed **Regulation 4056/86**)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:269:0001:01:EN:HTML>
- **Procedural rules for implementing competition policies – enforcement by national authorities**
 - **Council Regulation 1/2003**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R0001:EN:HTML>
- **Block Exemption for Consortia**
 - **Commission Regulation 611/2005** (extends **Regulation 823/2000** until April 2010)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005R0611:EN:HTML>
Commission Regulation 823/2000
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R0823:EN:HTML>
- **State aid for shipbuilding**
 - **Council Regulation 2600/97** (amends **Regulation 3094/95**)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997R2600:EN:HTML>
 - **Council Regulation 3094/95**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995R3094:EN:HTML>
- **Merger Control Regulation**
 - **Council Regulation 139/2004:**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0139:EN:HTML>

- **Freedom to provide services to maritime transport**
 - **Council Regulation 4055/86**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31986R4055:EN:HTML>

- **Unfair pricing practices in maritime transport**
 - **Council Regulation 4057/86**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31986R4057:EN:HTML>

- **Freedom of access to cargoes in ocean trades**
 - **Council Regulation 4058/86**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31986R4058:EN:HTML>

- **Freedom to provide services (maritime cabotage)**
 - **Council Regulation 3577/92**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992R3577:EN:HTML>

- **Guidelines on the application of Article 81 of the EC Treaty to maritime transport services**
[http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007XC0914\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007XC0914(01):EN:NOT)

United States Legislation

- **Ocean Shipping Reform Act 1998**
<http://www.admiraltylawguide.com/documents/osra98.html>

International Law

- **United Nations Conference on Trade And Development Code of Conduct for Liner Conferences UNCTAD Code on Liner Conferences 1974**
<http://r0.unctad.org/tt/docs-legal/unc-cml/Code%20of%20Conduct%20for%20Liner%20Conferences.pdf>

National Competition Authorities

 <u>Austria</u>	 <u>Belgium</u>	 <u>Bulgaria</u>	 <u>Cyprus</u>	 <u>Czech Republic</u>
 <u>Denmark</u>	 <u>Estonia</u>	 <u>Finland</u>	 <u>France</u>	 <u>Germany</u>
 <u>Greece</u>	 <u>Hungary</u>	 <u>Ireland</u>	 <u>Italy</u>	 <u>Latvia</u>
 <u>Lithuania</u>	 <u>Luxembourg</u>	 <u>Malta</u>	 <u>The Netherlands</u>	 <u>Poland</u>
 <u>Portugal</u>	 <u>Romania</u>	 <u>Slovakia</u>	 <u>Slovenia</u>	 <u>Spain</u>
 <u>Sweden</u>	 <u>United Kingdom</u>			

EU Competition Authority



European Commission

Appendix-1

(E) Tax

European Community Law

- **EC Treaty**
http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html
- **Directive 2006/112/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:347:0001:0118:EN:PDF>
- **Directive 2008/8/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:044:0011:01:EN:HTML>
- **Directive 2003/123/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0123:en:HTML>
- **Directive 2003/49/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0049:en:HTML>
- **Directive 90/434/EEC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31990L0434:en:HTML>

Irish Law

- **Taxes Consolidation Act 1997**
<http://www.irishstatutebook.ie/1997/en/act/pub/0039/index.html>
- **Revenue Commissioner's website.**
www.revenue.ie
- **The Vat Act 1972**
<http://www.irishstatutebook.ie/1972/en/act/pub/0022/index.html>

Appendix-1

(F) Environment

Irish Law

- **Intentional Pollution**
 - Sea Pollution Act 1991
<http://www.irishstatutebook.ie/1991/en/act/pub/0027/index.html>
 - Sea Pollution (Amendment) Act 1999
<http://www.irishstatutebook.ie/1999/en/act/pub/0018/index.html>
- **Dumping**
 - Dumping At Sea Act 1996
<http://www.irishstatutebook.ie/1996/en/act/pub/0014/index.html>
 - Dumping At Sea (Amendment) Act 2004
<http://www.irishstatutebook.ie/2004/en/act/pub/0035/index.html>
- **Emergency Response to Pollution Incidents**
 - International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969 (International Legal Materials 25)
http://www.imo.org/Conventions/contents.asp?topic_id=258&doc_id=680
 - International Convention on Oil Pollution Preparedness, Response and Co-operation 1990
http://www.imo.org/Conventions/contents.asp?topic_id=258&doc_id=682
 - International Convention on Salvage 1989
http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=687
 - The Merchant Shipping (Salvage and Wreck) Act 1993
<http://www.irishstatutebook.ie/1993/en/act/pub/0034/index.html>
- **Generally Applicable Environmental Legislation**
 - **Wild Birds Directive**
 - (S.I. No. 291/1985) European Communities (Conservation of Wild Birds) Regulations, 1985
<http://www.irishstatutebook.ie/1985/en/si/0291.html>
 - (S.I. No. 397 of 1985) European Communities (Wildlife Act 1976) (Amendment) Regulations, 1985
<http://www.irishstatutebook.ie/1985/en/si/0397.html>
 - (S.I. No. 254 of 1986).European Communities (Wildlife Act 1976) (Amendment) Regulations, 1986
<http://www.irishstatutebook.ie/1986/en/si/0254.html>

- **Wildlife Act 1976**

<http://www.irishstatutebook.ie/1976/en/act/pub/0039/index.html>

- Wildlife (Amendment) Act 2000
<http://www.irishstatutebook.ie/2000/en/act/pub/0038/index.html>

- **Habitats Directive**

- (S.I. No. 94/1997) European Communities (Natural Habitats) Regulations 1997
<http://www.irishstatutebook.ie/1997/en/si/0094.html>

European Community Law

- **United Nations Convention on the Law of the Sea**
http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm
- **Declaratory Statement by the European Community on accession to the UNCLOS**
http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm#Euroean%20Community%20Upon%20signature

Community Legislation

- **Wild Birds Directive**
 - **Council Directive 79/409/EEC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31979L0409:EN:HTML>
- **Habitats Directive**
 - **Council Directive 92/43/EEC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>
- **Carriage of dangerous or polluting goods**
 - **Council Directive 93/75/EEC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993L0075:EN:HTML>
- **Shipment of radioactive substances and nuclear waste**
 - **Council Directive 92/3/Euratom**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0003:EN:HTML>
 - **Council Regulation 1493/93**
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993R1493:EN:HTML>
- **Technical standards for the shipping sector**

- **Council Decision 98/434/EC**
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=31998D0434
- **Council Decision 92/143/EEC**
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992D0143:EN:HTML>
- **Council Directive 96/98/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0098:EN:HTML>
- **Commission Decision 2000/638/EC**
<http://ec.europa.eu/enterprise/rtte/decision/marit-en.pdf>
- **Council Directive 2000/59/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0059:EN:HTML>
- **Common rules for the registration and inspection, of ships**
 - **Council Directive 94/57/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0057:EN:HTML>
- **Port State Control**
 - **Council Directive 95/21/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0021:EN:HTML>
 - **Council Directive 96/40/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0040:EN:HTML>

International Law

- **The United Nations Convention on the Law of the Sea**
http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm
- **The International Maritime Organisation**
www.imo.org

- **IMO Conventions**

- **Operational Pollution from Ships (MARPOL)**
International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto
http://www.imo.org/TCD/mainframe.asp?topic_id=258&doc_id=678
- **Carriage of Dangerous Goods**
International Convention for the Safety of Life at Sea (SOLAS) 1974
14 International Legal Materials 959.
http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647

IMO's International Maritime Dangerous Goods (IMDG) Code of 1966.
http://www.imo.org/safety/mainframe.asp?topic_id=158
- **Movement of Hazardous Wastes**
The 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal
<http://www.basel.int/text/con-e.pdf>
- **Transportation of Radioactive Material**
The INF Code
http://www.imo.org/safety/mainframe.asp?topic_id=354
- **Regulations of the International Atomic Energy Agency**
[http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/3A27ACA7F3768F50CA256F7100429A5B/\\$file/IntAtomEnerAgenPrivlm.m.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrumentCompilation1.nsf/0/3A27ACA7F3768F50CA256F7100429A5B/$file/IntAtomEnerAgenPrivlm.m.pdf)

Regional Conventions

- **Helsinki Convention**

- Convention on the Protection of the Marine Environment in the Baltic Sea Area (Helsinki Convention) 1974 (as amended)
<http://www.helcom.fi/stc/files/Convention/Conv1108.pdf>
- **HELCOM Commission**
<http://www.helcom.fi>
- Council Decision 94/156/EC of 21 February 1994 on the accession of the Community to the Convention on the Protection of the Marine Environment of the Baltic Sea Area (1974 Helsinki Convention)
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Decision&an_doc=1994&nu_doc=156
- Council Decision 94/157/EC of 21 February 1994 on the conclusion, on behalf of the Community, of the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention as revised in 1992)
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Decision&an_doc=1994&nu_doc=157

- **Barcelona Convention:**
 - **Barcelona Convention:**
http://europa.eu/legislation_summaries/environment/water_protection_management/l28084_en.htm
 - Council Decision 1999/802/EC of 22 October 1999 on the acceptance of amendments to the Convention for the Protection of the Mediterranean Sea against Pollution and to the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft (Barcelona Convention)
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Decision&an_doc=1999&nu_doc=802
 - Council Decision 2004/575/EC of 29 April 2004 on the conclusion, on behalf of the European Community, of the Protocol to the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea.
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Decision&an_doc=2004&nu_doc=575

- **OSPAR Convention**
 - **OSPAR Commission**
<http://www.ospar.org/>
 - Council Decision of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Decision&an_doc=1998&nu_doc=249
 - Council Decision of 8 May 2000 concerning the approval, on behalf of the Community, of the new Annex V to the Convention for the Protection of the Marine Environment of the North-East Atlantic on the protection and conservation of the ecosystems and biological diversity of the maritime area and the corresponding Appendix 3.
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Decision&an_doc=2000&nu_doc=340

Appendix-1

(G) Navigation

International Law

- **International Convention for Safety of Life at Sea 1974**
http://www.imo.org/Conventions/contents.asp?topic_id=257&doc_id=647
<http://sedac.ciesin.columbia.edu/entri/texts/acrc/solas60.txt.html>
- **Convention on the International Maritime Satellite Organization (INMARSAT) 1976**
http://www.imo.org/Conventions/contents.asp?doc_id=674&topic_id=257
- **Load Lines Convention 1966**
http://www.imo.org/TCD/mainframe.asp?topic_id=254
<http://www.admiraltylawguide.com/conven/protoloadlines1988.html>
- **The International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers 1978**
http://www.imo.org/Conventions/contents.asp?doc_id=651&topic_id=257#1
<http://www.admiraltylawguide.com/conven/stcw1978.html>
- **Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREGs)**
http://www.imo.org/TCD/contents.asp?doc_id=649&topic_id=257
<http://www.admiraltylawguide.com/conven/collisions1972.html>
- **International Convention for Safe Containers 1972**
http://www.imo.org/Conventions/contents.asp?doc_id=673&topic_id=257
<http://www.admiraltylawguide.com/conven/containers1972.html>
- **Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, (SUA) 1988**
http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=686
- **International Convention on Maritime Search and Rescue (SAR) 1979**
http://www.imo.org/Conventions/contents.asp?doc_id=653&topic_id=257
- **Convention on Facilitation of International Maritime Traffic (FAL) 1965**
http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=684

- **International Convention on Tonnage Measurement of Ships, 1969**
http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=685
- **International Convention on Salvage, 1989**
http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=687

European Law

- **Council Regulation (EEC) No 613/91**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991R0613:EN:HTML>
- **Commission Regulation (EEC) No 2158/93**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31993R2158:EN:HTML>
- **Council Decision 92/143/EEC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992D0143:EN:HTML>
- **Council Directive 94/57/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31994L0057:EN:HTML>
- **Council Directive 96/98/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0098:EN:HTML>
- **Council Directive 98/18/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31998L0018:EN:HTML>
- **Council Directive 2001/96/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0096:EN:HTML>
- **Council Directive 2003/24/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0024:EN:HTML>
- **Regulation (EC) No 725/2004**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004R0725:EN:HTML>
- **Council Directive 2005/65/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0065:EN:HTML>
- **Council Directive 2005/59/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0059:EN:HTML>

- **Regulation (EC) No 1406/2002**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002R1406:EN:HTML>
- **Council Directive 95/21/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0021:EN:HTML>
- **Council Directive 96/40/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0040:EN:HTML>
- **Council Directive 2001/25/EC**
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0025:EN:HTML>

Irish Law

- **The Merchant Shipping Act 1952**
<http://www.irishstatutebook.ie/1952/en/act/pub/0029/index.html>
- **The Merchant Shipping Act 1996**
<http://www.irishstatutebook.ie/1996/en/act/pub/0035/index.html>
- **The Merchant Shipping (Load Lines) Act 1968**
<http://www.irishstatutebook.ie/1968/en/act/pub/0017/index.html>
- **The Merchant Shipping (Certification of Seamen) Act 1979**
<http://www.irishstatutebook.ie/1979/en/act/pub/0037/index.html>
- **The Harbours Act 1996**
<http://www.irishstatutebook.ie/1996/en/act/pub/0011/index.html>

Appendix-2 Abbreviations

AIS	Automatic Identification Systems
BIMCO	Baltic and International Maritime Council
CMI	Comité Maritime International
CIL	Commissioners of Irish Lights
COLREGs	Convention on the International Regulations for Preventing Collisions at Sea
ECSA	European Community Shipowners' Association
EEA	European Economic Area
EEZ	Exclusive Economic Zone
EMSA	European Maritime Safety Agency
EU	European Union
FAL	Convention on Facilitation of International Maritime Traffic
FD&D	Freight, Defence and Demurrage (Insurance)
FST	Federation of Transport Workers' Unions in the European Union
GA	General Average
GATT	General Agreement on Tariffs and Trade
GMDSS	Global Maritime Distress and Safety System
HELCOM	Helsinki Commission
IALA	International Association of Marine Aids to Navigation and Lighthouse Authorities
IHO	International Hydrographic Organisation
ILO	International Labour Organisation
IOC	Intergovernmental Oceanographic Commission
IMDG Code	International Maritime Dangerous Goods Code
IMO	International Maritime Organisation
IMSO	International Mobile Satellite Organisation
INF	International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel
INMARSAT	International Maritime Satellite Organization
ISM Code	International Safety Management Code
ISPS Code	International Ship and Port Facility Security Code
MARPOL	International Convention for the Prevention of Pollution from Ships
MLC	Maritime Labour Convention

OECD	Organisation for Economic Co-Operation and Development
OPRC	International Convention on Oil Pollution Preparedness, Response and Co-operation
OSPAR	Convention for the Protection of the North East Atlantic
P&I Clubs	Protection and Indemnity Clubs
Paris MoU	Paris Memorandum of Understanding
PSC	Port State Control
SAC	Special Areas of Conservation
SAR	International Convention on Maritime Search and Rescue
SCI	Sites of Community Importance
SDR	Special Drawing Right
SOLAS	International Convention for the Safety of Life at Sea
SPA	Special Area of Conservation
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
TBT	Agreement on Technical Barriers to Trade
UNCEFACT	United Nations Centre for Trade Facilitation and Electronic Business
UNEDIFACT	United Nations Electronic Data Interchange for Administration Commerce & Transport
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDOALOS	United Nations Division for Ocean Affairs and the Law of the Sea
UNECE	United Nations Economic Commission for Europe
UNFCCC	United Nations Framework Convention on Climate Change
VAT	Value Added Tax
VDR	Voyage Data Recorders
VTs	Vessel Traffic Services
WCO	World Customs Organisation
WHO	World Health Organisation
WTO	World Trade Organisation
YAR	York-Antwerp Rules

Appendix-3 Competition Law Glossary of Terms

Abuse (of a dominant position): Anti-competitive business practices (including improper exploitation of customers or exclusion of competitors) in which a dominant firm may engage in order to maintain or increase its position on the market. Article 82 lists some examples of abuse, namely unfair pricing, restriction of production output and imposing discriminatory or unnecessary terms in dealings with trading partners.

Block exemption: Regulations, issued by the Commission or by the Council pursuant to Article 81(3) specifying the conditions under which certain types of agreements are exempted from the prohibition of restrictive agreements laid down in Article 81(1). When an agreement fulfils the conditions set out in a block exemption regulation, individual notification of that agreement is not necessary: the agreement is automatically valid and enforceable.

Cartel: Arrangements between competing firms designed to limit or eliminate competition between them, generally done by fixing prices, limiting output, sharing markets, allocating customers or territories, bid rigging or a combination of these.

Community Dimension: The Merger Regulation applies the following turnover criteria:

- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion and
- where the aggregate turnover in the EU of each of at least two of the undertakings concerned is more than EUR 250 million, unless each of the undertakings concerned generates more than two thirds of its aggregate EU-wide turnover within a single Member State.

If the above-mentioned thresholds are not reached, a concentration nevertheless has a Community dimension if the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 2.5 billion;

- in each of at least three Member States, the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million;
- in each of at least three Member States, the aggregate turnover of each of at least two of the undertakings concerned is more than EUR 25 million;
- the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million, unless each of the undertakings concerned generates more than two thirds of its aggregate EU-wide turnover in one and the same Member State.

Concerted practice: A concerted practice can be constituted by direct or indirect contact between firms whose intention or effect is either to influence the conduct of the market or to disclose intended future behaviour to competitors.

De Minimis Notice: Communication from the Commission clarifying the conditions where the impact of an agreement or practice on competition can be considered to be non-appreciable. Where the aggregate market share of the undertakings involved remains below certain thresholds, agreements or practices are considered to be of minor Community importance and are not examined by the Commission.

Dominant position: A firm is in a dominant position if it has the ability to behave independently of its competitors, customers, suppliers and, ultimately, the final consumer. A dominant firm holding such market power would have the ability to set prices above the competitive level to sell products of an inferior quality or to reduce its rate of innovation below the level that would exist in a competitive market.

Effect on trade between Member States: A necessary condition for the application of competition rules. An effect on trade exists in particular where national markets are partitioned or the structure of competition within the common market is affected.

Essential facility: Facility or infrastructure which is necessary for reaching customers and/or enabling competitors to carry on their business. A facility is essential if its duplication is impossible or extremely difficult due to physical, geographical, legal or economic constraints. Denying access to an essential facility may be considered an abuse of a dominant position by the entity controlling it, in particular where it prevents competition in a downstream market.

Horizontal agreements: Agreements conducted between undertakings occupying the same position in the market chain, essentially between direct competitors.

Individual exemption: Pursuant to Article 81(3) certain notified agreements between companies can be deemed exempt from the prohibition of Art. 81(1) EC Treaty on the basis of an individual assessment if their benefits to general welfare (product improvement, technical or economic progress, benefits to consumer) outweigh their restrictive effects on competition.

Liner shipping conference: Agreement between two or more shipping companies to provide scheduled cargo and/or passenger service on a particular trade route under uniform rates and common terms.

Notification: Formal information which firms provide to the Commission under EU antitrust and merger law in certain situations and which concern agreements they plan or have concluded. Notification of an agreement affords the companies concerned immunity from fines under Article 15 of Regulation No 17. The Merger Regulation obliges undertakings to notify any concentration of Community dimension to the Commission, normally within one week of the conclusion of the concentration agreement. The participating undertakings are not allowed to put the concentration into effect before its notification and before the Commission has declared it compatible with the common market.

Relevant market: A relevant market is defined according to both product and geographic factors. In general terms, a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable (substitutability) by reason of product characteristics, prices and intended use. Products and/or services that could readily be put on the market by other producers without significant switching cost or by potential competitors at reasonable cost and within a limited time span also need to be taken into account. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas.

Services of general economic interest: Basic, publicly accessible supply of energy, telecommunication, postal services, transport, water and waste disposal services. The precise definition of the particular task assigned to the entrusted undertaking is an important element for assessing whether and to what extent it is justified for the State to grant exclusive rights or funds to that undertaking in order to ensure the fulfilment of the task.

Undertaking: An entity engaged in economic or commercial activities. An entity engaged in purely regulatory or non-economic activities is not considered an undertaking and thus not subject to competition rules. Employees are not regarded as undertakings but consultants are deemed to be undertakings.

Vertical agreement: An agreement conducted between undertakings occupying different positions within the market e.g. agreements between retailers and suppliers.