

EU Ship Recycling Regulation (SRR) 1257/2013

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EU WASTE LEGISLATION AND COMBATTING WASTE CRIME
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- **Short historical background and rationale**
- **Main objectives, scope and relationship with the Basel/WSR regime**
- **Key obligations under the SRR**
- **Enforcement provisions (Art. 22) and main challenges for implementation (e.g. 'outflagging').**



The presentation mainly focuses on the scope of the EU Ship Recycling Regulation, the key obligation stemming from the regulation and also some practices that the shipowners try to employ in order to escape their obligations.

These challenges for implementation have already rendered some national case law which the presentation tries to cover...

Why do you need to know more about the legal aspects of the ship recycling?

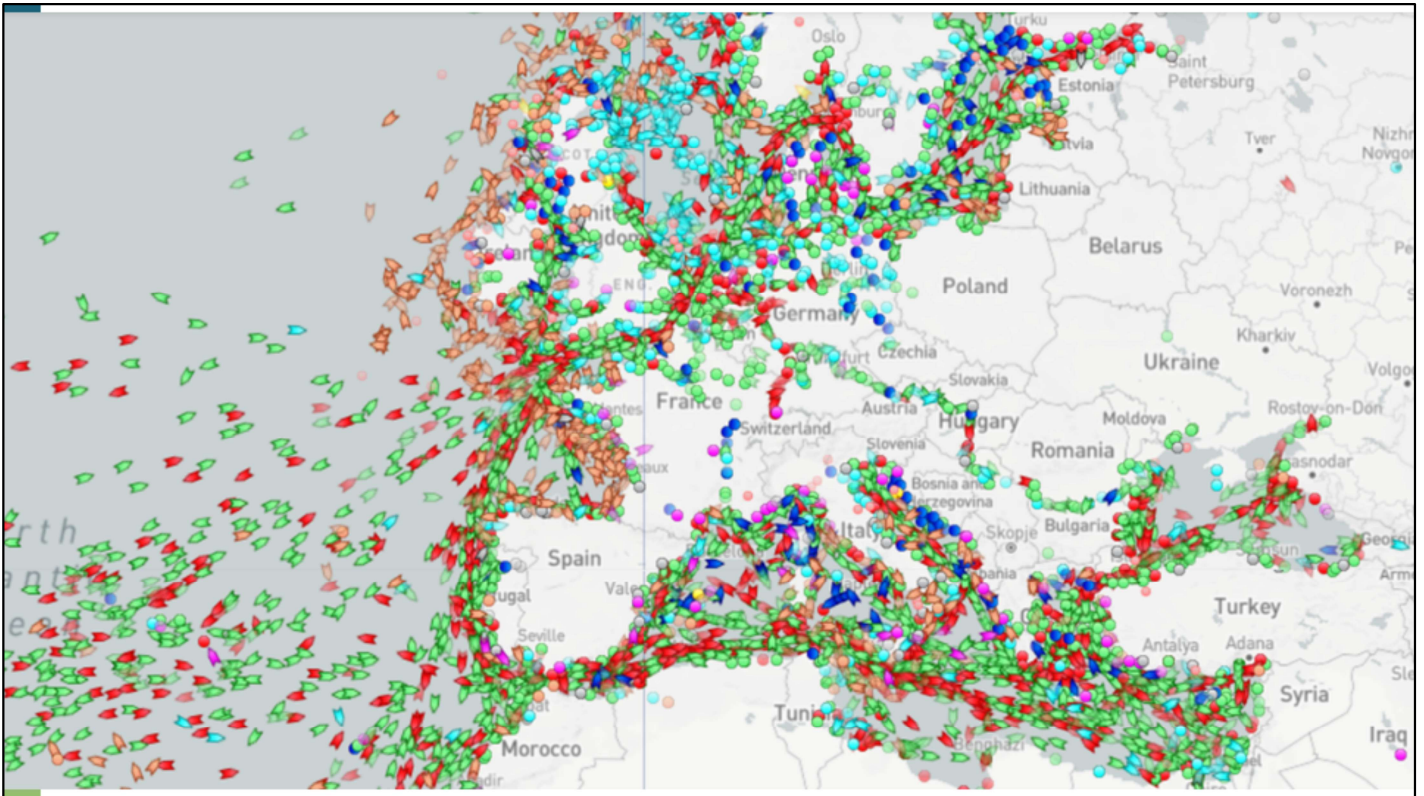
- To **understand the relationship** between various EU legislative acts (WSR x SRR) and the EU law and international law.
- To **understand the scope** of the SRR which also determines the scope of the WSR.
- Because the SRR relies on the **same principles** as the WSR.
- Because **even the inland Member States** and their authorities may deal with the ship recycling aspects (liability, gathering evidence).
- Because **more and more ships** are being recycled around the world and **in the EU**.
- And more operators will consider violating the SRR requirements.
- Because you **care about the environment**.



The ship recycling is a narrow topic but very important for the protection of the environment.

Its regulation at the EU level also helps to understand other pieces of EU legislation – the Waste Framework Directive and the Waste Shipment Regulation.

So it is a small piece in the puzzle, but part of the package nevertheless.



European ship owners possess around 40% of the world fleet. Many of these ships are being dismantled outside the EU, mainly in South Asia, under conditions that are often harmful to workers' health and the environment. Since 31 December 2018, the EU Ship Recycling Regulation has required all large sea-going vessels sailing under an EU Member State flag to use an approved ship recycling facility included in the European List of ship recycling facilities.



Most people have seen pictures usually from South Asia with large European ships being taken on-shore, sailed onto a beach for demolition and dismantling. This is called **beaching**.

The demolition works is often undertaken by extensive use of manual work, and has been subject to massive criticism due to dangerous and hazardous working conditions, and because hazardous waste is not handled in an environmentally responsible manner.

You can even see it on google maps in detail. Here, in a small village in Pakistan. The names of the facilities confirm these serve for dismantling ships but obviously, they do not use any modern technology and the workers, even children, usually use their bare hands.

To understand the whole process, it is advisable to watch the operation for couple of years. Or, alternatively, it is possible to use google maps for that.

You can see that with the operations, the environment is affected seriously.

Something that cannot be properly seen from above is the workers and their families. It is not surprising that in countries where modern standards of ship recycling have been introduced, this had a major impact on society. The workers became more engaged within the company and local community. They emphasised education of their

children. In other words, their work became a proper job, instead of living in hell with no future.

The situation is changing, even though slowly, but the EU plays an important part in it.

The South Asian shipbreaking yards have purchased the majority of the world's obsolete tonnage for demolition for years. The beaching method is mainly used in India, Pakistan and Bangladesh. None of these countries are members of the OECD. And you should remember from the last week that transport of waste to the non-OECD countries is forbidden. Therefore, also the exportation of end of life vessels from the EU for scrapping in these countries is prohibited. This however does not always prevent the ship-owners from selling the vessels to be beached in South Asia.

Ship recycling – facts and statistics

- The top five ship recycling countries in the world, between them accounting for more than **98 % of all ship recycling** by gross tonnage, are **Bangladesh, China, India, Pakistan and Turkey**.
- The large majority of end-of cycle ships are **recycled through beaching**, by which ships are run up against beach.
- Ship waste often consists of various dangerous substances, including **asbestos, lead, mercury, oil and arsenic, substances which cause enormous damages to local ecosystems and marine life**.
- The International Labour Organization (ILO) has characterised ship-breaking as *“amongst the most dangerous occupations, with unacceptably high levels of fatalities, injuries and work-related diseases”*.



Sailing old ships to Asia is a common practice.

Basically almost all the large ships in the world end up in just a couple of countries, mostly being recycled through beaching, polluting the environment with dangerous substances such as **asbestos, lead, mercury, oil and arsenic**.

In principle, recycling ships is a good thing.

The ship recycling industry is a **major supplier of steel and an important part of the economy in many countries**, such as Bangladesh, India, Pakistan and Turkey. The recycling of scrap metals from ships also **reduces the need for mining**. In this way, it is a vital part of the circular economy. However, the impacts of current ship-recycling practices undermine the industry's contribution to sustainable development.

Ship recycling – facts and statistics

- In 2015, **78% of total dismantled shipping tonnage in the world was beached**, with European owners accounting for around **one third**.
- **German and Greek owners beached 74 % and 87 % of their disposed vessels respectively**, while Norwegian owners recycled 13 of their 17 end-of-life vessels in modernised facilities
- In total, the **world shipping fleet grew** by 42 million gross tonnage (GT) in 2014. However, overall growth rates in the industry have been **slowing**. The tonnage reported for demolition (22 million GT) has decreased since the record year of 2012 (36 m).
- In recent years, the decrease in ship cargo has meant that many older vessels may be more financially viable as scrap. In addition, **previously 'seaworthy' ships around the world are being retired earlier than ever** (oversupply - poor planning, stricter standards, new architecture and technologies).



Most of the ships are beached.

The EU ships present approximately one third of the ships that are beached. Many of the EU ships however sail under a different flag so the number is higher.

The shipping industry reacts rather slowly to the changes on the market. It takes some time to build a ship and therefore, there could be many ships for recycling as a reaction for oversupply or new technologies. This is quite important because the owner may suddenly decide it is cheaper to beach the ship instead of sailing it back to the EU.

The recycling market is driven fundamentally by the demand and price of steel. This, in turn, depends on the global economy which faces a very uncertain geopolitical outlook. Those same geopolitics also have an impact on the shipping markets.

For example, in 2014 it seemed that the financial crisis is gone. And the shipping fleet was growing. Similarly, in 2019, the tanker earnings rised upwards in a way not seen so far this century.

This was encouraging shipowners to operate their vessels as long as possible, or even invest in ships that a few years back would have been recycled.

On the other hand, every decrease in ship cargo results in more ships recycled.

Currentl because of the covid-19 pandemy, some markets are falling and will make many shipns unneccessary – and ready to be recycled.

Historical background and rationale



Ship recycling – historical background

- Since 2000, the **ILO, IMO and the Secretariat of the Basel Convention** have increasingly addressed the issue of shipbreaking or ship recycling with the aim of bringing a global mandatory regime to the field – IMO 2005 Assembly resolution A.981(24) .
- The IMO **Hong Kong International Convention** for the Safe and Environmentally Sound Recycling of Ships (2009): *intends to impose new requirements on ships from 'cradle to grave', covering issues around ship recycling on a global scale.*

Covers:

- the design, **construction**, operation and preparation of ships;
- the **operation of ship recycling facilities**;
- the establishment of an appropriate **enforcement** mechanism for ship recycling, incorporating certification and reporting requirements.



Ships which became waste, and which are subject to a transboundary movement for recycling are regulated by the **so-called Basel Convention**, implemented in the EU through the WSR.

However, these instruments, and their mechanism for monitoring and enforcement, are not adapted to the specificities of ships and international shipping. So the main ship recycling countries ratified the Basel Convention but this had no effect on ship recycling in practice.

As a result. Since 2000, “International bodies such as the International Labour Organisation, the Basel Convention Conference of the Parties and the International Maritime Organisation have increasingly addressed the issue of shipbreaking or ship recycling with the aim of bringing a global mandatory regime to the field.

This recognition prompted the adoption, in 2009 under the auspices of the International Maritime Organization (“the IMO”), of the so-called **Hong Kong Convention**.

The Hong Kong Convention tries to regulate the ships from ‘cradle to grave’, not only their recycling but also their design and construction and the operation of the ship recycling facilities.

The Convention is aimed at ensuring that ships, when being recycled after reaching

the end of their operational lives, do not pose any unnecessary risks to human health, safety and to the environment.

Ship recycling – historical background

- The **Hong Kong International Convention** (2009) **requirements**:
- Individual **inventory of hazardous materials** (initial, additional, final **surveys**);
- restricted or **prohibited installation of hazardous materials**;
- „**Ship Recycling Plan**“ specifying the manner in which each ship will be recycled, depending on its particulars and its inventory.
- Parties will be required to take effective measures to ensure that **ship recycling facilities** under their jurisdiction **comply with the Convention**.

„**Small**“ **problem** – not yet in force (24m + 15 States > 40 % of world merchant shipping by gross tonnage + Σ annual ship recycling volume in last 10 years > 3 % Σ merchant shipping tonnage)



There are several key requirements of the Hong Kong Convention that are also reflected in the EU law which is meant to implement the Convention and at the same time, support its ratification.

Most notably, the ships must have an inventory of hazardous materials based on surveys carried out during various stages of their life.

Furthermore, there must be a ship recycling plan which lays down conditions how each ship will be recycled, depending on its particulars and its inventory.

However, there is a small problem. The Convention is not yet in force. To remember the exact conditions , I have prepared a mathematical formula which says it will enter into force only 24 months after the date of ratification by at least 15 states representing a combined merchant fleet of at least 40 per cent of the gross tonnage of the world's merchant shipping and whose combined maximum annual ship recycling volume during the preceding ten years constitutes not less than three per cent of the gross tonnage of the combined merchant shipping of the same states.

In simple words, probably at least three of the large recycling countries must join the Convention otherwise the global regulation will not work.

Currently, there are 15 parties to the convention, but they do not meet other criteria.

Only two of the top five recycling countries joined the Convention, India and Turkey. The rest of the countries are mostly European but also for example, Japan, Panama, Congo or **Saint Kitts and Nevis. If you are familiar with international shipping, you probably know that the flag of the ship matters more than the size of the country. For example, St. Kitts and Nevis is a small island but registers more than** 2000 vessels and issued seafarer documents 25 thousand seafarers of many nationalities

You may ask what is the problem with the ratification? It is not uncommon at the international level that it goes this slowly. In particular, some countries believe that strict standards would affect their economy. They deal with the issue in a different way, for example prosecuting the polluters. Another example is China which does not allow foreign ships to be recycled in Chinese yards.

On the other hand in the last two years more countries have ratified the Convention than in previous decade and there is a growing pressure on the recycling countries. Also there are some good examples of companies in Turkey and in particular in India which benefit from the modern standards, both environmentally and economically.

Hong Kong International Convention (2009) guidelines:

- 2011 Guidelines for the Development of the **Ship Recycling Plan**, adopted by resolution MEPC.196(62);
- 2012 Guidelines for **Safe and Environmentally Sound Ship Recycling**, adopted by resolution MEPC.210(63);
- 2012 Guidelines for the **Authorization of Ship Recycling Facilities**, adopted by resolution MEPC.211(63);
- 2012 Guidelines for the **survey and certification of ships** under the Hong Kong Convention, adopted by resolution MEPC.222(64); and
- 2012 Guidelines for the **inspection of ships** under the Hong Kong Convention, adopted by resolution MEPC.223(64).
- 2015 Guidelines for the development of the **Inventory of the Hazardous Materials**, adopted by resolution MEPC.269(68).



From the practical point of view, you may find useful that there are already some guidelines prepared under the Convention which can be used to understand and interpret even the EU law, for example on the the **inspection of ships** or the **Inventory of the Hazardous Materials**

Development at the EU level:

- The European Commission has addressed ship scrapping in several studies since 2000 - **Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC**

Preamble of the SRR:

- *"The Hong Kong Convention **provides explicitly for its Parties to take more stringent measures** consistent with international law, with respect to the safe and environmentally sound recycling of ships, in order to prevent, reduce or minimise any adverse effects on human health and the environment."*
- *"Current ship **recycling capacity in OECD countries** which is legally accessible to ships flying the flag of a Member State **is insufficient**. Current safe and environmentally sound ship recycling capacity in countries which are not members of the OECD is sufficient to treat all ships flying the flag of a Member State and is expected to **expand further by 2015 as the results of actions taken by recycling countries to meet the requirements of the Hong Kong Convention**."*



Unlike the global Hong Kong regime which is not ready yet, the EU ship recycling rules are mostly in force – and will become fully applicable in 2021.

The Ship Recycling Regulation was adopted 2013, seven years ago. The member states and the operators of the ships were provided some time to adapt to the new rules, in general 5 and 7 years.

In the preamble, the Regulation notices that there is not enough capacity to recycle ships in countries which are not members of the OECD to treat all ships flying the flag of a Member State. So the EU ships cannot be properly dismantled.

So the tasks of the EU regulation is not just to impose obligations on the shipowners but also to build and authorise the infrastructure. And this way to support the Hong Kong Convention

The SRR implements the Convention in EU law but also provides for more stringent protective measure. It applies mainly to ships flying the flag of a Member State, with a few provisions applying to ships flying the flag of a third country.

Development at the EU level:

- The European Commission has addressed ship scrapping in several studies since 2000 - **Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC**
- Implementing decision establishing the European list of ship recycling facilities
- Implementing decision on the on the format of the certificate on the inventory of hazardous materials
- Implementing decision on the format of the ready for recycling certificate
- Implementing decision on the format of the report of planned start of ship recycling
- Implementing decision on the format of the statement of completion of ship recycling



Main objectives, scope and relationship with the Basel/WSR regime



THE OBJECTIVES

- to prevent, reduce, minimise and, to the extent practicable, **eliminate accidents**, injuries and other adverse effects on human health and the environment caused by ship recycling,
- **to enhance safety**, the protection of human health and of the Union marine environment throughout a ship's life-cycle, in particular to ensure that hazardous waste from such ship recycling is subject to environmentally sound management,
- to facilitate **the ratification of the Hong Kong International Convention**,
- **to reduce disparities between operators in the Union, in OECD countries and in relevant third countries** - the establishment of a European List of ship recycling facilities (**'the European List'**)



The objective of the SRR is to reduce the adverse effects related to the recycling of ships. In addition to facilitating the ratification of the Hong Kong Convention, the SRR aims to minimise accidents and injuries. The purpose is also to enhance safety and the protection of human health. The SRR also lays down rules to ensure the proper administration of hazardous materials on ships.

The obligations under the SRR include, most importantly, the obligation for the shipowners to bring their EU flagged end-of life vessels only to recycling facilities included in the European list)

so there is a list of the authorised facilities which can exclusively recycle the EU ships

THE SCOPE

- **ships flying the flag of a Member State**
 - * Art. 12 applies to ships flying the flag of a third country calling at a port or anchorage of a Member State – prohibition of installation and use of hazardous materials at a port, inventory of hazardous materials, the statement of compliance... *may be warned, detained, dismissed or excluded from the ports or offshore terminals*
- **Except warships, ships of less than 500 gross tonnage**
- **Except ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the Member State whose flag the ship is flying.**

“Member States are encouraged to adopt appropriate measures to ensure that ships excluded from the scope of this Regulation act in a manner that is consistent with this Regulation, in so far as is reasonable and practicable”



As regards the scope of the SRR, it applies mainly to ships flying the flag of a Member State, with a few provisions applying to ships flying the flag of a third country calling at a port or anchorage in a Member State (Article 2 and Article 12). Such ships may be “a vessel of any type whatsoever” of 500 gross tonnage (GT) or more, except warships or other ships owned or operated by a State and used only on government non-commercial services.

So only the large EU ships fall under the SRR and other large ships if they approach the EU shores.

Ships of less than 500 gross tonnage are excluded from the scope of the SRR.

Furthermore, ships used only on government **non-commercial service**, and ships operating throughout their life **exclusively in waters subject to the sovereignty or jurisdiction of the Member state whose flag the ship is flying** are exempted (Art 2. SRR).

THE SCOPE



It might be not easy to estimate the tonnage of the ship. At least for a lawyer. All these ships are under 500 gross tonnage, they range somewhere between 50 and 200. Therefore, they do not fall under the SRR.

If they were over 500 tonnes, second question would be, where do they operate?

Very often, these small ships operate only **in waters of certain Member State. And therefore they not fall under the SRR regime**

What if these ships are flying under the third country flag?

They would also classify as waste, but the SRR prohibits leaving them in the EU.

THE SCOPE x WSR

- Ships of less than 500 gross tonnage, ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the Member State whose flag the ship is flying – **WSR**

„Ships neither covered by the scope of the Hong Kong Convention nor by this Regulation, and any waste on board of a ship other than operationally generated waste, should continue to be subject to Regulation (EC) No 1013/2006 and to Directives 2008/98/EC and 2008/99/EC of the European Parliament and of the Council, respectively.”

- ***EU-flagged ships covered by the Ship Recycling Regulation are explicitly excluded from the scope of the WSR and the WFD.***



If the old ships do not fall under the SRR, they are waste under the waste framework directive. If transported across borders, the waste shipping regulation would be applicable.

To ensure legal clarity and avoid the administrative burden, the EU-flagged ships covered by the SRR are excluded from the scope of the WSR and WFD.

Just to be clear, the large ships under the SRR are also waste and the same principles apply to their management as waste but the specific requirements are used.

THE SCOPE x WSR

WSR:

- *Subjects ships within its scope to controls throughout their life-cycle and aims to secure recycling of those ships in an environmentally sound manner*
- *Bans the export of hazardous wastes to non-OECD countries ("Basel ban"), bans the export of waste for disposal. **Ships are generally classified as hazardous waste.***

*Historically, ship owners had **systematically evaded the provisions of the WSR** by recycling their ships at facilities located in non-OECD countries. The beaching method is mainly used in India, Pakistan and Bangladesh. None of these countries are members of the OECD. Exportation of end of life vessels from the EU for scrapping in these countries is therefore prohibited*

- *One of the motives behind the SRR (a global regime for ship recycling)*



Before the SRR the WSR applied to all ships.

At the end of their life they were classified as waste, usually hazardous waste, because of various dangerous substances..

As such, their export to the non-OECD countries is and was forbidden. Historically, however, the ship owners had systematically evaded the provisions of the WSR by recycling their ships at facilities located in non-OECD countries due to a lack of ship recycling capacity in OECD countries, but also because the price received for their end-of- life ships is higher in those countries.

This practice is difficult to be fully avoided. The perfect scenario would be a global regime for ship recycling which means the SRR and the Hong Kong Convention.

THE SEATRADE CASE

In 2018, a **Dutch court** ordered ship-owner Seatrade to pay fines ranging between EUR 50,000 to EUR 750,000 for **selling four ships** to an intermediary ("cash buyer"), who would scrap the ships at beaching yards in India and other countries offering beaching facilities.

Two company **executives were banned from exercising the profession** as director, commissioner, advisor or employee of a shipping company for one year. The prison sentence, previously sought by the prosecution, has been waived amid the company's lack of a previous criminal record which was accepted as a mitigating factor.

Seatrade's defense was, inter alia, that the decision to scrap the ships was taken while the ships were located outside the territorial waters of the EU. According to Seatrade, the WSR was not applicable to the recycling of operational ships; alternatively, that ships could not be classified as waste under the WSR.



In the Seatrade Case, the Dutch court was dealing with four ships sold **to an intermediary ("cash buyer")**, who would scrap the ships in Sout Asia. This is a **very common practice that the ship is sold to a middle man.**

Seatrade argued that the ships could not be classified as waste since they were outside of EU and fully operational.

THE SEATRADE CASE

- The Court examined the internal email exchanges, as well as exchanges between the accused and the shipbrokers prior to and during the last voyages of the ships.
- It concluded that **when the ships left the ports** of Rotterdam and Hamburg in 2012, **the intention was already to demolish the ships**, which makes the ships categorised as waste, despite the fact that they were still seaworthy, certified, insured and operational.
- The fact that **three of the ships were still in commercial service and carried a cargo** during part of the voyage to their final destination did not affect this conclusion.
- And since the ships were a **combination of non-hazardous and hazardous waste** and must, therefore, be regarded as hazardous waste.



The court however concluded **that already when the ships left the ports of Rotterdam and Hamburg, the intention was to demolish them**, which makes the ships categorised as waste

The fact that **three of the ships were still in commercial service and carried a cargo** during part of the trip to their final destination did not affect this conclusion.

This conclusion was based on the internal email exchanges, as well as exchanges between the accused and the shipbrokers.

Nowdays, the ships under the SRR would have to be recycled in one of the authorised facilities. However, this obligation applies only to the ships under the EU flag. So if the shipowner changes the flag and sells the ships for beaching quickly afterwards, it is a similar behaviour.

HOLLAND MAAS CASE

- Shipowner Holland Maas Scheepvaart Beheer was fined 780,000 EUR and also paid a settlement of 2.2 million EUR for sending a vessel to an Indian shipbreaking yard in 2013. The vessel, the HMS Laurence, was sold to a cash buyer. It departed from Italy and ended up in Alang, India.
- The settlement equalled to what the seller earned by selling the ship to the beaching yard. The Prosecutor stated that it had accepted the settlement, as the company has announced that it will take measures to avoid scrapping vessels on beaches in the future. The ruling of the court followed a criminal investigation involving multiple EU countries.
- Moreover, in 2015, the captain of the HMS Laurence was sentenced by the Dutch Maritime Disciplinary Court to a six-month conditional suspension of his master's navigation license. Beaching the vessel was in breach of the captain's duty of care to the environment, according to the Disciplinary Court.



In the Holland Maas case, the ship was sold to a cash buyer and taken to India. The company had to pay a large fine and the captain was punished by the disciplinary court.

Interestingly, The ruling of the court followed a criminal investigation involving multiple EU countries. So this exactly is the case that shows certain cooperation and information Exchange might be needed in order to trace the operations and obtain the evidence.

You can see that the operator had to pay a settlement which equalled to what he earned by selling the ship to the beaching yard. The settlement was accepted because the company had announced that it would take measures to avoid scrapping vessels on beaches in the future.

OTHER CASES AND CONSEQUENCES

- More investigations are carried out in other European countries, including the **Harrier case in Norway** concerning the ship which was detained by the Norwegian authorities on suspicion of being on the way to a beaching yard in Pakistan.
- And also the investigation carried out by **DEFRA of the North Sea Producer**, which was allowed to leave the UK in 2016 based on claims that it would be further operationally used. Its import to Bangladesh and consequent beaching and breaking was even declared illegal by the Supreme Court of Bangladesh in 2019.
- The activity of the criminal prosecutors, environmental agencies and the NGOs puts pressure on the ship-owners which **introduce their sustainable recycling policies** and commit to the safe and clean recycling of their fleet off the beach. **The group of responsible ship-owners** was joined by Dutch Boskalis and WEC Lines BV, German Hapag Lloyd, and Scandinavian companies Wallenius-Wilhelmsen and Grieg.
- Moreover, the cases such as Seatrade and Holland Maas affect second-hand sale and purchase contracts, where sellers include substantial restrictions (and warranties) on resale scrapping.



There are several other cases carried out in Europe nowadays – and they all share similar behaviour – the operator behaves that the ship is operational and creates sort of a fake business strategy. Then the ship is taken to South Asia and dismantled.

Such behaviour concerning **the North Sea Producer** was found illegal by the **authorities in Bangladesh** and confirmed by the court. So even investigation on **the other side of the world may bring some light to the EU cases.**

The work of the prosecutors is already showing some fruit:

First, it puts pressure on the ship-owners which **introduce their sustainable recycling policies** and commit to the safe and clean recycling of their fleet off the beach.

Second, the criminal cases affect second-hand sale and purchase contracts, where sellers include substantial restrictions (and warranties) on resale scrapping. This, of course, does not completely void their criminal liability, but helps in practice.

Key obligations under the SRR

In short:

The EU flagged ships must have an **Inventory of Hazardous Materials ("IHM")**; **be surveyed**; **be certificated**; and ships destined for recycling, be **recycled in accordance with the SRR**.

All EU-flagged vessels to be recycled after 31 December 2018 are required to have a **Ready for Recycling Certificate**; these vessels shall only be sent to recycling facilities included in the European List of Ship Recycling Facilities (**European List**).



As regards the key obligations under the SRR (large ships under the EU flag):

These ships must have an **Inventory of Hazardous Materials ("IHM")**; **be surveyed**; **be certificated**; and ships destined for recycling, be **recycled in accordance with the SRR**.

All EU-flagged vessels to be recycled after 31 December 2018 are required to have a **Ready for Recycling Certificate**; these vessels shall only be sent to recycling facilities included in the European List of Ship Recycling Facilities (**European List**).

There are also some obligations imposed on the ships under the flag of the third country which I will briefly cover as well.

The inventory of Hazardous Materials (IHM) - Articles 5 (EU-Flag) and 12 (non-EU flag) of the SRR

- **New EU flagged ships** built after 31 December 2018 must have on-board an IHM.
- **Existing EU flagged ships** must as far as practicable **have on-board an IHM**; this requirement became **compulsory as from 31 December 2020**.
- **After 31 December 2020, all non-EU flagged ships calling at EU ports and anchorages, must also have onboard IHMs.** The non-EU flagged ships must in addition carry a statement of compliance issued by the authorities of the third country whose flag the ship is flying.
- The SRR **prohibits or restricts the installation or use of hazardous materials** referred to in its **Annex 1** on ships (asbestos, ozone-depleting substances, polychlorinated biphenyls, perfluorooctane sulfonic acid, and anti-fouling compounds and systems on ships.)



The inventory of Hazardous Materials* becomes **compulsory as from 31 December 2020*

Furthermore, after this date, all non-EU flagged ships sailing to EU, must also have onboard IHMs. The non-EU flagged ships must in addition carry a statement of compliance issued by the authorities of the third country whose flag the ship is flying.

And the obligations do not only cover the inventory, the SRR also prohibits or restricts installation of these materials.

Article 32

Application

1. This Regulation shall apply from the earlier of the following two dates, but not earlier than 31 December 2015:
 - (a) 6 months after the date that the combined maximum annual ship recycling output of the ship recycling facilities included in the European List constitutes not less than 2,5 million light displacement tonnes (LDT). The annual ship recycling output of a ship recycling facility is calculated as the sum of the weight of ships expressed in LDT that have been recycled in a given year in that facility. The maximum annual ship recycling output is determined by selecting the highest value occurring in the preceding 10-year period for each ship recycling facility, or, in the case of a newly authorised ship recycling facility, the highest annual value achieved at that facility; or
 - (b) on 31 December 2018. ←
2. However in relation to the following provisions the following dates of application shall apply:
 - (a) Article 2, the second subparagraph of Article 5(2), Articles 13, 14, 15, 16, 25 and 26 from 31 December 2014; ←
 - (b) the first and third subparagraphs of Article 5(2) and Article 12(1) and (8) from 31 December 2020. ←



This implies that there are several phases of the SRR application. You can find details in Article 32 of the regulation, but please note that there are different regimes for the ship recycling facilities based on their output, both applicable, and other obligations also applicable with the least exception of Articles 5(2) and 12(1) and (8).

Article 12

Requirements for ships flying the flag of a third country

1. Subject to point (b) of Article 32(2), when calling at a port or anchorage of a Member State, a ship flying the flag of a third country shall have on board an inventory of hazardous materials that complies with Article 5(2).

Article 5

Inventory of hazardous materials

1. Each new ship shall have on board an inventory of hazardous materials, which shall identify at least the hazardous materials referred to in Annex II and contained in the structure or equipment of the ship, their location and approximate quantities.
2. Subject to point (b) of Article 32(2), existing ships shall comply, as far as practicable, with paragraph 1.

In the case of ships going for recycling, they shall comply, as far as practicable, with paragraph 1 of this Article from the date of the publication of the European List of ship recycling facilities ('the European List') as set out in Article 16(2).

Subject to point (b) of Article 32(2), when the inventory of hazardous materials is developed it shall identify, at least, the hazardous materials listed in Annex I.



Articles 12 and 5 are the ones that deal with inventory of hazardous materials.

Ship Recycling Facilities (the European List) – Article 13 to 16 of the SRR

- Ships flying the flag of an EU Member State may only be recycled in recycling facilities which are included in the European List of Ship Recycling Facilities.
- To be included in this European List, any ship recycling facility or yard irrespective of its location has to comply with strict requirements which aim at achieving a high level of protection of human health and the environment.
- ***The European List was first established on 19 December 2016 and last updated on 14 December 2022.***
- ***It now contains 45 yards, including 38 facilities located in Europe (EU, Norway, UK), 6 facilities in Turkey and 1 facility in the USA.***
- The Commission has received a number of applications from ship recycling facilities located in third countries. The applications are being thoroughly reviewed and site inspections conducted to check their credentials. The Commission then decides on their inclusion in the European List.



Two yards located in Türkiye have been removed from the List as they have not complied with the requirements of the Ship Recycling Regulation. One yard failed to sufficiently protect its employees' working conditions, and the other was de-listed due to a lack of transparency on ship dismantling operations.

Ship Recycling Facilities (the European List) – Article 13 to 16 of the SRR

The operator of a ship recycling facility must:

- **send the ship recycling plan**, once approved in accordance with Article 7(3), to the ship owner and **the administration** or a recognised organisation authorised by it;
- **report** to the administration that the ship recycling facility is ready in every respect **to start the recycling** of the ship.
- when the total or partial recycling of a ship **is completed**, **send a statement of completion** to the administration which issued the ready for recycling certificate for the ship. The statement of completion shall include a **report on incidents and accidents damaging human health and/or the environment**, if any.



You can also check the European List of ship recycling facilities which contains information as regards.

By the way, its update was one of the first documents officially signed by the new head of the commission, von Leyen.

There are detailed rules on the cooperation between the **operator of a ship recycling facility and the shipowner and also the administrative authority**. **Therefore, it should be clear, when and how will be the recycling carried out and also if there were any incidents and accidents damaging human health and/or the environment during the proces.**

The ship owners' obligations for ship recycling - Articles 6 to 10 of the SRR

- **Before a ship can be properly recycled**, the ship owner must **provide to the operator of the ship recycling facility information for the development of a ship recycling plan, the completion of a number of surveys, the provision of all relevant notifications** to the relevant administrations, and the issuance and endorsement of inventory certificates.
- **When preparing to send a ship for recycling**, ship owners shall:
 - 1) **provide the operator of the ship recycling facility with all ship-relevant information**, necessary for the development of a ship recycling plan;
 - 2) **notify the relevant administration** in writing, within a time frame to be determined by that administration, of the intention to recycle the ship in a specified ship recycling facility or facilities.



The shipowner must provide the facility all the relevant documents. The authorities and prosecutors, if needed, can therefore get all the information from either the shipowner or the operator of the facility. Anyway, the authority must be notified of the intention to recycle the ship so no recycling should be carried out in secret.

Enforcement provisions (Art. 22)



Inspections

In October 2019, the European Maritime Safety Agency (EMSA) published a new "Guidance on inspections of ships by the port States in accordance with Regulation (EU) 1257/2013 on ship recycling".

- **Regular: SPC Directive + limitation** = checking that either an inventory certificate or a ready for recycling certificate is kept on board, which, if valid, shall be considered sufficient for the inspection to be approved.
- **Detailed: no valid certificate or reasonable doubts:**
- **the condition** of the ship does not correspond substantially with the of that certificate, Part I of the inventory of hazardous materials, or both;
- **there is no procedure implemented** on board the ship for the maintenance of Part I of the inventory of hazardous materials.

Penalties

- ...may be warned, detained, dismissed or excluded from the ports
- Member States should lay down rules on penalties applicable to infringements of this Regulation and ensure that those penalties are applied **so as to prevent circumvention of ship recycling rules**. The penalties, **which may be of a civil or administrative nature**, should be **effective, proportionate and dissuasive**.



The inspections are based on certificates the shipowners must hold.

If the inventory certificate is valid, it should be considered sufficient for the inspection to be approved.

However, if there is no valid certificate, or there are reasonable doubts, a detailed inspection should be made.

Please note there are already guidelines on the inspections issued in 2019.

The SRR also contains general obligations to introduce penalties, which may be of a civil or administrative nature, should be **effective, proportionate and dissuasive**. Once again, this is important from the practical point of view, because this requirement applies not only to the general scheme of sanctions but to the penalties awarded in each individual case. So you can refer to the Regulation and its goals if you decide to impose a severe penalty.

In this respect, the SRR does not fall under the Environmental crime directive. so it is not necessary to introduce crimes. But most of the member states have done so.

Bringing administrative or judicial proceedings

- **Natural or legal persons affected or likely to be affected by** a breach of Article 13 in conjunction with Article 15 and Article 16(1)(b) of this Regulation, **or having a sufficient interest in environmental decision-making** relating to the breach of Article 13 in conjunction with Article 15 and Article 16(1)(b) of this Regulation **shall be entitled to request the Commission to take action under this Regulation** with respect to such a breach or an imminent threat of such a breach.
- **The Commission shall inform the persons who submitted a request of its decision to accede to or refuse the request for action and shall provide the reasons for it.**



The SRR also contains provisions on the right of the affected individuals to ask the Commission to take action under the regulation.

Main challenges for implementation



Disparities in the sanctioning regimes

- The sanctioning regime is to be determined by the individual Member States. While the guidelines provided in the Regulation are that penalties imposed - which may be of a civil or administrative nature - should be effective, proportionate and dissuasive, **considerable variation in the strictness of enforcement and on the level of penalties imposed for non-compliance can nevertheless be expected.**

Re-flagging

- The Hong Kong Convention and the SRR should present *progressive steps forward, once fully effective*. **However, both the IMO and EU frameworks remain based upon flag-state jurisdiction.** Therefore, a critique remains that legislation based upon flag-state enforcement could have little effect if ships are 'reflagged' for convenience at end of life. **Continuation of re-flagging practices would mean that neither regulation could uphold a 'polluter pays' principle in every case, as they stand.**



And last but not least, the practical problems. ***Disparities in the sanctioning regimes*** are a regular issue in EU environmental law enforcement. The SRR is not different.

Re-flagging is a problem because both the IMO and EU frameworks remain based upon flag-state jurisdiction.

Re-flagging

- The European ship owners control **over 40 % of the world's merchant fleet**, with Greece the top ship-owning country globally. However, **only 22% of vessels fly the flag of an EU Member State**.
- **Approx. 70 % of the world's fleet is flagged in a country other than the country of beneficial ownership.**
- **Nearly 40% of all end-of-life ships beached in South Asia in 2014 were imported under flags with a particularly weak record of enforcing international law, such as Comoros, St Kitts and Nevis and Tuvalu.**
- **In 2014, only 7.7 % of all beached ships (by gross tonnage) were still registered under an EU flag, although 32 % were still under EU ownership**
- Several bodies and mechanisms, including the UN's (still un-ratified) Convention for Registration of Ships (1986), have called for a more genuine link to be established between ownership and flag state, to avoid such evasion of responsibility.



According to statistics, the European ship owners control **over 40 % of the world's merchant fleet** but many ships do not fly under the EU flag. This means re-flagging is a common practice

However, it is difficult to establish more genuine link between ownership and flag state.

Re-flagging

- The SRR does not contain any prohibition against reflagging/outflagging a ship a priori to the decision to recycle.
- However, such **attempt to avoid the strict rules contained in the SRR might be considered crime if owners of EU-flagged vessels decided to re-flag outside the EU to avoid the SRR and the vessel is recycled in a non-listed yard shortly afterwards.**
- Then the enforcement practitioners should scrutinize the decision-making process **to determine whether the change in registration was to prima facie avoid the obligation to recycle the ship at a yard included in the EU List, similarly to practice in illegal fishing.**
- For example, in November 2019, the Danish Environmental Protection Agency has asked Maersk **to explain why the company out-flagged four ships from Denmark which were then shortly thereafter scrapped on the beaches in the Indian coastal region Alang.**



Re-flagging is not prohibited by the SRR. However, such **attempt to avoid the strict rules contained in the SRR might be considered crime if owners of EU-flagged vessels decided to re-flag outside the EU to avoid the SRR and the vessel is recycled in a non-listed yard shortly afterwards.**

What is next?



A modern yard which complies to the SRR standards would have:

- the installation of a completely impermeable surface to the dismantling areas with appropriate drainage systems;
- a completely traceable downstream waste disposal system;
- heavy duty cranes to lift entire blocks directly from the ship to the impermeable floor;
- metal slag collectors to catch material falling within the inter-tidal zone when dismantling side shells.

What is next?

- The Commission has launched an **evaluation of the Ship Recycling Regulation**. An Open Public Consultation and targeted consultations of different stakeholders' groups will take place in the first quarter of 2023.
- **Commission Notice Guidelines** on the enforcement of obligations under the EU Ship Recycling Regulation relating to the Inventory of Hazardous Materials of vessels operating in European waters (2020/C 349/01)
In the particular case of the enforcement of obligations stemming from the EU Ship Recycling Regulation, however, no automatic recourse to the notion of force majeure can be made.
- **EMSA's Guidance on inspections of ships** by the port States in accordance with Regulation (EU) 1257/2013 on ship recycling
- **EMSA's Best Practice Guidance on the Inventory of Hazardous Materials**



THANK YOU FOR YOUR ATTENTION!

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