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## **I. European Union and International**

### **1. Legislation and legislative developments**

#### **1.1 *New sulfur requirements in force in Emission Control Areas (ECA)***

More stringent fuel sulfur requirements in the Emission Control Areas in North Europe came into force on January 1, 2015 (ECA or SECAs), which means that any ships sailing in the North Sea, the Baltic Sea and the English Channel must use fuel with a sulfur content of up to 0.1%, as opposed to the 1% limit set in 2010.

The requirements for use of fuel with a low sulfur content in marine vessels operating within the Sox Emission Control Areas (SECAs), drawn up by the MEPC (Marine Environment Protection Committee) under the auspices of the International Maritime Organization (IMO) as determined in Annex VI of the Marine Pollution Convention MARPOL covering the prevention of pollution from ships, lay down that from January 1, 2015 the fuel used in these areas must meet the 0.1% sulfur standard. These requirements apply to all fuel oils as defined in Annex VI of MARPOL Reg.2.9.

There are currently four designated ECA's, comprising the Baltic Sea, the North Sea, the North American area, stretching up to 200 miles from the costs of the continental shelf of the United States and Canada, and the United States Caribbean Sea area.

#### **1.2 *Commission approves regulation on airworthiness of aircraft and appliances***

Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organizations and personnel involved in these tasks was published in the Official Journal of the European Union on December 17, 2014 and establishes the technical requirements and administrative procedures to ensure the continuing airworthiness of aircraft and the components for fitment in them.

The Regulation's provisions on commercial air carriage are applicable to licensed air carriers as defined by EU law and to aircraft or appliances which are registered in a member state, or in a third country and used by an operator for which a member state ensures oversight of operations, and lay down a number of obligations to ensure the continuing airworthiness of aircraft and the components determined in an annex. Moreover, the organizations involved in the maintenance of large aircraft or of aircraft used for commercial air carriage, and components intended for fitment in them must be approved in accordance with the provisions in annex II to the Regulation.

The Regulation also sets out the qualification requirements for maintenance certifying staff along with the requirements to be met by the organizations involved in the training of those certifying staff.

## **2. Recent case law**

### *2.1 General Court of the European Union upholds the legality of Spanish tax lease system*

On December 9, 2014, the General Court of the European Union (ECG) delivered a judgment in the case brought by the Dutch shipyard association against the European Commission's decision authorizing the new tax rules for certain finance leasing contracts, (the so called tax lease), implemented by Law 16/2012, of December 27, 2012, adopting various tax measures aimed at consolidating public finances and boosting economic activity, applicable to the acquisition of certain assets, including ships that are not mass-produced under the Spanish tax lease.

For further information, please see previous Transport and Shipping Newsletters on this tax system.

The judgment dismissed the appeal lodged by the Dutch shipyard association which argued that the Commission should have initiated the formal investigation procedure to hear the complainant and, if required, examine whether there was a potential State aid scheme for Spanish shipyards.

Most of the judgment is devoted to dismissing the procedural arguments used by the Dutch shipyards to contend that there were "serious difficulties" that should have required the Commission to perform a more detailed analysis. In particular, the Court did not accept that the length of the preliminary investigation, the complaints submitted by third parties and the requests for information sent by the Commission to the Spanish authorities were enough to indicate the existence of those difficulties.

### *2.2 Court of Justice of the European Union rules against Spanish stevedoring system*

In its Judgment of December 11, 2014, the Court of Justice of the European Union (Sixth Chamber) (CJEU) ruled against the Spanish stevedoring system (governed by Legislative Royal Decree 2/2011, of September 5, 2011, approving the Revised State Ports and Merchant Navy Law), by holding that Spain has failed to fulfill its obligations under article 49 TFEU, by generally requiring stevedoring companies operating at Spanish ports of general interest to register with a SAGEP (Sociedad Anónima de Gestión de Estibadores Portuarios) a company managing stevedoring companies, and by not allowing them to recruit their own temporary or permanent personnel on the open market, unless the workers put forward by the SAGEP are unsuitable or insufficient.

The judgment clarified that, even though the obligations imposed by the Spanish port rules apply identically to operators established in Spain and in other member states, the effect of those obligations may be to prevent operators from other member states from establishing in Spanish ports of general interest to carry on stevedoring activities in them. In particular, both the obligation to register with a SAGEP and, in some cases, to invest in its capital, and the obligation to give priority in recruitment to workers supplied by that company over others and to recruit a minimum number of those workers on a permanent basis, compel stevedoring companies to carry out an adaptation which may have financial consequences and cause disturbances in their operations, to a point where companies from other member states are dissuaded from establishing at Spanish ports of general interest.

The court therefore held that the obligations that the Spanish port system imposes on stevedoring companies to carry on their activities in Spanish ports of general interest constitute a restriction to the freedom of establishment for the purposes of article 49 TFEU, that this restriction goes beyond what is necessary to achieve the sought aims, and is therefore unfounded.

### **2.3** *General Court of the European Union confirms validity of surcharges required by air carriers for checked-in luggage*

In a judgment delivered on September 18, 2014, the General Court ruled in favor of an airline following a request for a preliminary ruling submitted by Ourense Judicial Review Court no. 1 in a case concerning a fine imposed on an air carrier for an unfair term in this company's air carriage contracts which compelled a passenger to pay an additional charge for checked-in luggage.

Based on its interpretation of article 22(1), of Regulation No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services, the CJEU held that Regulation No 1008/2008 applies to the setting of fares for the carriage of air passengers and their luggage and that the price that must be paid for the carriage of checked-in luggage of air passengers may constitute an optional price supplement, within the meaning of article 23(1) of Regulation No 1008/2008, because that service cannot be considered to be compulsory or necessary for the carriage of those passengers.

In relation to luggage, by contrast, the CJEU found that luggage that is not checked in, namely hand luggage, must be considered, in principle, as constituting a necessary aspect of the carriage of passengers and that its carriage cannot, therefore, be made subject to a price supplement, on condition that the hand luggage meets reasonable requirements in terms of weight and dimensions, and complies with applicable security requirements.

## **II. Spain**

### **1. Legislation and legislative developments**

#### **1.1** *Changes to tonnage tax rules in new Corporate Income Tax Law (Law 27/2014, of November 27, 2014)*

The new Corporate Income Tax Law (Law 27/2014, of November 27, 2014) was published in the Official State Gazette on November 28, 2014 and will apply to all tax periods commenced or commencing on or after January 1, 2015, the date it came into force.

Worth noting among the amendments to the tonnage tax rules for shipping companies, now set out in Title VII, Chapter XVI of Law 27/2014, articles 113 to 117, (formerly in articles 124 to 128 of the Revised Corporate Income Tax Law, known as the TRLIS), in addition to some minor changes (especially the broadening of the types of ships that can trigger the rules for those managed strategically and commercially within a state belonging to the European Economic Area, instead of referring to the European Union), is that the application to apply the rules now simply has to be filed *before* the start of the tax period in which it will start to take effect, rather than having to be submitted at least 3 months before the start of the period, as was required before.

### *1.2 New exemptions for sales and supplies of fluorinated gases to ships and aircraft*

Law 28/2014, of November 27, 2014, amending Value Added Tax Law 37/1992, of December 28, 1992, Law 20/1991, of June 7, 1991 amending tax aspects of the Canary Islands Economic and Tax Regime, Excise and Special Taxes Law 38/1992, of December 28, 1992, and Law 16/2013, of October 29, 2013, establishing certain environmental taxation measures and adopting other tax and financial measures was published in the Official State Gazette on November 28; 2014.

One of the amendments in Law 28/2014 was made to article 5 of Law 16/2013, of October 29, 2013, establishing certain environmental taxation measures and adopting other tax and financial measures, to add new exemptions for the first sale or supply of fluorinated greenhouse gases to ships used for international shipping or aircraft used for international transport, not including those used for private, leisure purposes.

For the purposes of this article, "international shipping" or "international air transport" means routes that start out from the territory where the tax applies and end outside that territory or vice versa. Moreover, international shipping only includes shipping by vessels in the high seas engaged in an industrial, commercial or fishing activity, other than carriage, insofar as the length of the voyage, with no stops, is above forty-eight hours.

### *1.3 General Fishing Fleet Register created in new Marine Fishing Law and personal income tax exemptions for seafarers' salary income*

Law 33/2014, of December 26, 2014, amending Law 3/2001, of March 26, 2001, on State Marine Fishing was published in the Official State Gazette on December 27, 2014.

The new enhancements and amendments brought in by this law include the creation of a General Fishing Fleet Register, which, in line with Constitutional Court Judgment 166/2013, of October 7, 2013, includes both vessels fishing in international waters and those fishing in both international and inland waters (Operating Fishing Fleet Census), and those fishing only in inland waters and auxiliary vessels for aquaculture facilities (Registers or Censuses organized by the autonomous communities), in other words, all the ships forming part of the Community Ship Register.

The Law has thus created (in article 67) at the Environment, Food and Agriculture Ministry a Fishing Fleet General Register which will include all Spanish flag fishing vessels forming part of the Community Ship Register. This General Register will be composed of vessels fishing in international waters and those fishing in both international and inland waters listed on the Operating Fishing Fleet Census under article 22, and of vessels fishing only in inland waters.

Moreover, in additional provision 41 of Law 26/2014, of November 27, 2014, amending Personal Income Tax Law 35/2006, of November 28, 2006, the revised Nonresident Income Tax Law approved by Legislative Royal Decree 5/2004, of March 5, 2003, and other tax laws, an additional provision number forty-one has been added determining that, for the crews of Spanish flag fishing vessels registered on the Community fishing fleet register and the owner, in the Special Register of Spanish Fishing Vessel Companies, fish only for tuna or similar species outside Community waters and outside a belt of 200 sea miles from the member states' base lines, 50 percent of their salary income in respect of sailing activities in those vessels will be treated as exempt income. The effective implementation of this additional provision will be subject to its compatibility with EU law.

#### *1.4 Amendment to rules on cards required to steer pleasure craft*

The Decision of November 27, 2014 by the Directorate-General for the Merchant Navy amending annex VII of Royal Decree 875/2014, of October 10, on the sailing qualifications for steering pleasure craft was published in the Official State Gazette on January 15, 2015.

This Decision sets out the respective formats and instructions for the cards for yacht captains, yacht skippers, skippers of pleasure craft, skippers for basic sailing, the jet ski card, and the sailing license.

#### *1.5 Harmonization of customs procedures in maritime traffic*

The Official State Gazette of December 31, 2014 published Order HAP/2485/2014, of December 29, 2014, amending Order EHA/1217/2011, of May 9, 2011, regulating the procedure for the entry and presentation of goods introduced in the Community customs territory and the temporary warehousing summary declaration, as well as the exit summary declaration and the re-export notification in the context of the procedures for the exit of goods from that territory, and Order of December 18, 2001, establishing the instructions for filing the cargo manifest for maritime traffic.

In addition to updating customs legislation to transpose certain recent EU Directives, the Order is aimed at harmonizing the communication procedure between competent authorities for all existing customs formalities in the case of maritime traffic.

Changes have thus been made to the procedure for the entry and presentation of cargo introduced in the Community customs territory and the temporary warehousing summary declaration as well as the reexport notification in the context of the procedures for the exit of goods from that territory. In ports of general interest, the declaration must be filed through the port authority concerned which, in turn, will send it immediately to the state ports public agency which will send it immediately to the customs authorities.

Another notable change is the obligation for the owners of maritime cargo terminals to notify the customs authorities immediately of the identification details of containers entering or leaving by land and the time of their entry or exit and, if applicable, the means of transport used and the carrier. This notification must be made electronically according to the specifications given by the State Tax Agency.

#### *1.6 Creation of State Railway Safety Agency*

Royal Decree 1072/2014, of December 19, 2014 creating the State Railway Safety Agency, and approving its Charter, as the authority responsible for railway safety in Spain and an independent body with its own legal personality, was published in the Official State Gazette on December 23, 2014.

Under the authorization provided in additional provision three of Law 28/2006, of July 18, 2006, on state agencies to enhance public services and in additional provision eighty-six of Law 22/2013, of December 23, 2013 on the General Budget for 2014, the State Railway Safety Agency has been created, to succeed the Railways Directorate-General (attached to the Ministry of Development) in relation to the aims, powers and functions conferred on the Agency, and it will be governed by that Law 28/2006, of July 18, 2006, by the Charter and, on a secondary basis, by the rules applicable to public law entities attached to the General State Administration.



One of the main functions of the State Railway Safety Agency is as the authority responsible for railway safety, as established in Law 39/2003, of November 17, 2003, and in particular, the organization, inspection and supervision of the safety of all the components of the railway system, in relation to both infrastructure, rolling stock and railway personnel, and the operation of the railway. The State Railway Safety Agency will also carry out the functions related to the interoperability of the railway system falling within the powers of the central government. Its other responsibilities include granting, suspending and revoking the licenses of railway companies.

### *1.7 Rules on inspections of foreign ships updated*

Royal Decree 1004/2014, of December 5, 2014, amending Royal Decree 1737/2010, of December 23, 2010, approving the regulations on inspections of foreign ships at Spanish ports was published in the Official State Gazette on December 6, 2014 and entered into force on the following day.

This royal decree has been adopted to transpose Directive 2013/38/EU of the European Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port State control, intended to include the reference to the Maritime Labour Convention, 2006 (MLC 2006), adopted by the International Labour Organization (ILO) on February 23, 2006, among the international legislation for which the competent authorities of the coastal states of the European Union verify application and compliance when performing the control of foreign ships entering their ports.

All the references to the updated rules and articles on work at sea and seafarers in the Maritime Labour Convention, 2006 have thus been built into the rules on control of the foreign ships entering Spanish ports, bearing in mind that it is the port State that must verify compliance with the MLC 2006 by the merchant ships entering their ports, with the aim to protect the health and safety of the crew on ships and to avoid distortions of competition.

The specific provisions brought in by this royal decree notably include the establishment of an onshore procedure for complaints related to MCL 2006, which allows any complaints by a crew member of a ship calling at a Spanish port over failure to comply with the requirements in MCL 2006 (including the rights of crew members) to be made to an inspector from the harbormaster's office. In those cases, the inspector must conduct a preliminary investigation.

## **2. Recent case law**

### *2.1 Supreme Court confirms validity of increased cover for civil liability in the carriage of passengers by air*

In a judgment rendered on July 4, 2014, the Supreme Court (Civil Chamber) dismissed the cassation appeal lodged by an insurance company in a case concerning an aviation accident and confirmed that, subject to article 25 of the Convention for the Unification of Certain Rules for International Carriage by Air, done in Montreal on May 28, 1999 and ratified by Spain in a Ratification Instrument published in the Official State Gazette on May 20, 2004, a covenant in which the owner of an aircraft and policyholder increases the cover for death by reason of civil liability in scenarios of strict and fault-based liability is perfectly valid, and therefore the insurer is liable for the increased amount that would have been payable by the insured.

The Supreme Court thus confirmed the view taken by the lower courts which established that the holder of an aviation civil liability policy may take out a policy in an amount higher than

that established in the Air Navigation Law and in the Montreal Convention, for civil liability scenarios (article 21). This increased cover will take effect on the covenanted terms, in this case not only for scenarios of willful misconduct or serious fault, but also for all strict and fault-based liability scenarios.

In short, the Supreme Court accepted the validity of increased cover for civil liability in the carriage of passengers by air and confirmed the order determining the insurer's liability for the increased amount that would have been payable by the insured.

**More information:**

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