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I. European Union and International

1. Legislation and legislative developments

1.1 *Spain ratifies Protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea*

On September 11, 2015, the Official State Gazette (BOE) published the Instrument of Ratification of the Protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974, done in London on November 1, 2002 (the Athens Protocol).

The Athens Protocol, which has been ratified by the European Union and therefore must be applied by all the member states, raises considerably the limits of the carrier's liability both for the death of, or personal injury to, a passenger on a ship and for the loss of, or damage to, cabin luggage.

Thus, for the death of, or personal injury to, a passenger, this limit of liability was set at 46,666 Special Drawing Rights (SDRs) in the 1974 Athens Convention, whereas the Athens Protocol raises those limits to 250,000 SDRs per passenger, unless the carrier proves that the incident resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character.

The carrier's liability for the loss of, or damage to, cabin luggage is limited to 2,250 SDRs per passenger and carriage. Additionally, the carrier's liability for the loss of, or damage to, vehicles, including all luggage carried in or on the vehicle, is limited to 12,700 SDRs, and the carrier's liability for the loss of, or damage to, other luggage is limited to 3,375 SDRs, per passenger and carriage.

The Athens Protocol also introduces a compulsory insurance regime, in addition to a mechanism authorizing the state parties to have in place or introduce higher limits of liability (or no limit on liability) in the case of vehicles that are subject to the jurisdiction of their courts.

Also, the Instrument of Denunciation of the 1974 Protocol to the Athens Convention relating to the carriage of passengers and their luggage by sea, done in London on November 19, 1976 was published in the Official State Gazette, and became effective, on September 11, 2015,.

1.2 *Adaptation of some provisions on employment matters in the Directives related to seafarers*

On October 6, 2015, Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers was published in the OJEU.

Thus, whereas earlier Directives either exclude certain seafarers from their scope or allow the member states to exclude them, the EU takes the view that any such exclusions with respect to the working conditions and the information and consultation of workers may prevent seafarers from fully enjoying their rights to fair and just working conditions and to information and consultation, or limit the full enjoyment of those rights. Insofar as the existence of, and/or possibility of introducing, exclusions is not justified on objective grounds and seafarers are not treated equally, provisions which allow such exclusions should be deleted.

Accordingly, it is established that, in collective bargaining matters, a member of a special negotiating body or of a European works council, or such a member's alternate, who is a member of the crew of a seagoing vessel, will be entitled to participate in a meeting of the special negotiating body or of the European works council, or in any other meeting under any procedures established, where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place. Meetings should, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels. In cases where a member of a special negotiating body or of a European works council, or such a member's alternate, who is a member of the crew of a seagoing vessel, is unable to attend a meeting, the possibility of using, where possible, new information and communication technologies must be considered.

Elsewhere, in collective redundancy matters, it is established that where the projected collective redundancy concerns members of the crew of a seagoing vessel, the employer must notify the competent authority of the state of the vessel's flag.

Lastly, in relation to transfers of undertakings, it is established that Directive 2001/23/EC will apply to a transfer of a seagoing vessel that is part of a transfer of an undertaking, business or part of an undertaking or business, provided that the transferee is situated, or the transferred undertaking, business, or part of an undertaking of business remains, within the territorial scope of the Treaty on the Functioning of the European Union (TFEU). That Directive will not apply, however, where the subject-matter of the transfer consists exclusively of one or more seagoing vessels.

1.3 Commission Regulation (EU) 2015/1998 of 5 November laying down detailed measures for the implementation of the common basic standards on aviation security

On November 14, Commission Regulation (EU) 2015/1998 of 5 November laying down detailed measures for the implementation of the common basic standards on aviation security was published in the OJEU.

It sets out detailed measures for the implementation of the common basic standards on aviation security against acts of unlawful interference that jeopardize the security of civil aviation, and general measures supplementing those common basic standards.

The regulation entered into force on November 15 and will become applicable in the member states on February 1, 2016.

1.4 Decision on state aid implemented by Greece to a concession holder of a part of the Port of Piraeus

On October 15, 2015, Commission Decision (EU) 2015/1827 of 23 March 2015 on State aid SA 28876 (12/C) (ex CP 202/09) implemented by Greece for Piraeus Container Terminal SA & Cosco Pacific Limited was published in the OJEU.

This Decision is the outcome of a formal proceeding initiated following a complaint lodged with the Commission alleging that the Greek state granted unlawful state aid to the new concession holder in the form of tax exemptions and favorable provisions inserted in the concession agreement after the tender.

In the Decision, the Commission held that Greece had unlawfully put into effect, in breach of article 108(3), of the TFEU, a number of state aid measures in favor of Piraeus Container Terminal SA (PCT) and its creditor Cosco, such as exemption from income tax on interest

accrued until the date of the commencement of operation of Pier III, right to a VAT credit refund irrespective of the stage of completion of the subject-matter of the contract, or a right to carry losses forward without any time limit.

Accordingly, Greece was ordered to recover the incompatible aid granted from PCT and its parent company Cosco and ensure that the Decision is implemented within four months following the date of its implementation.

2. Recent case law

2.1 *The CJEU clarifies that a technical problem is not an extraordinary circumstance preventing the passenger's right to be compensated for a delay in her flight*

In its Judgment of September 17, 2015 (case C-257/14), the Court of Justice of the European Union (CJEU) ruled on a request for a preliminary ruling from Rechtbank Amsterdam (Netherlands) in relation to the interpretation of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights, and repealing Regulation (EEC) No 295/91.

This request was made in proceedings between a passenger and the airline KLM concerning KLM's refusal to compensate the applicant in the main proceedings, after her flight was delayed by a combination of technical defects of the aircraft.

Although the airline opposed the claim brought by the passenger seeking compensation on account of the delay in her flight, relying on the exception provided for in Article 5(3) of Regulation No 261/2004 in a case of 'extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken', the CJEU construed that, in the context of an air carrier, the unexpected event is inherent in the normal exercise of an air carrier's activity, and that the prevention of such a breakdown or the repairs occasioned by it, including the replacement of a prematurely defective component, is not beyond the actual control of the carrier concerned.

In short, the CJEU affirmed that article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delays of flights, and repealing Regulation (EEC) No 295/91, must be construed as meaning that a technical problem which arose spontaneously and is not attributable to poor maintenance and was moreover not detected during routine maintenance checks, does not constitute an 'extraordinary circumstance' within the meaning of that provision.

II. Spain

1. **Legislation and legislative developments**

1.1 *New government guarantees for converting vessels (engine replacements or scrubber installation)*

Article 51 of Law 48/2015, of October 29, 2015, on the General State Budget for 2016 (published in the Official State Gazette on October 30, 2015), which will enter into force on January 1, 2016, provides an important new item of funding amounting to €40 million for government guarantees to be provided for financing conversions of Spanish vessels not older than 15 years to prepare them to be powered by liquefied natural gas (LNG) (engine replacements) or install scrubbers for the gases from their engines, which might be very appealing to shipping companies in view of the new environmental requirements concerning the maximum sulphur content of marine fuels.

Additionally, as in previous years, the option for government guarantees to be provided for financing the acquisition of new merchant ships under construction or used that are not older than 5 years remains in force.

1.2 *Port and airport fees revised in the General Budget Law*

Law 48/2015, of October 29, 2014, on the General State Budget for 2016, published in the Official State Gazette on October 30, 2015, revises and reviews, among other elements, the applicable amounts and reductions for port and airport fees.

Notably, it has lowered the airport public levies and revised the reductions applicable in Spanish ports of general interest to the occupancy, ship, passenger and cargo fees, together with the correction multipliers applicable to ship, passenger and cargo fees.

1.3 *Changes in the regime on the social security protection of workers in the marine and fishing industry and in employment matters (reform of the Workers' Statute)*

On October 22, the Official State Gazette published Law 47/2015, of October 21, 2015 on the social security protection of people working in the marine and fishing industry.

This law enters into force on November 1, 2015, with a few exceptions which will enter into force on January 1, 2016, and repeals the revised wording of Law 116/1969, of December 30, 1969 and of Law 24/1972, of June 21, 1972, on the special social security regime for seafarers, approved by Decree 2864/1974, of August 30, 1974.

It seeks to bring together in a single legal instrument the new legal regime on both the Special Social Security Regime for Seafarers and on the other benefits and services managed by the Social Marine Institute, an agency attached to the Employment and Social Security Ministry and in charge of social security protection in the marine and fishing industry.

The Law thus embraces both the protection of the workers under the special social security regime for seafarers, and any other elements and programs supplementing their social security protection: marine healthcare, welfare, and marine and health training.

Its scope is also broadened to embrace new sectors of workers such as those engaged in aquaculture, divers and stevedore dockworkers, which the new law defines in accordance with the announcement made in the revised State Ports and Merchant Shipping Law, approved in Legislative Royal Decree 2/2011, of September 5, 2011.

Now included among salaried employees, for the first time, are the staff working on fixed platforms for exploration or exploitation of marine resources, the research and safety staff on board merchant vessels or marine fishing vessels, and the workers engaged in aquaculture. This group also includes divers, net fishers, stevedore dockworkers, port pilots and the administrative staff of stevedoring companies.

A special regime is designed in the Law, drawing a distinction between two categories: salaried workers and self-employed workers. Additionally, the Law was launched with the aim to simplify the rules in the regime for the sea, by setting out only the regime's special provisions on contributions and reduction multipliers for retirement age. For all other matters, the Law tries to avoid the former duplication of provisions by referring to the general social security legislation.

Lastly, a notable new addition concerning the recreational boating industry is the inclusion of the sailors on board recreational yachts in the category of self-employed workers, making subject to the special regime for self-employed workers (RETA, after its initials in Spanish) those sailors who, habitually, personally and directly, for gain and outside the scope of the management and organization of another person, enroll as technical personnel and crew on recreational or leisure craft.

And also, on October 23, the Official State Gazette published Legislative Royal Decree 2/2015, approving the revised Workers' Statute, which revises the term *estibadores portuarios* referring to stevedore dockworkers. In particular, it treats as a special employment relationship "that of the stevedore dock workers who perform their work through companies supplying workers to the enterprises holding licenses for port cargo handling services, provided those entities engage exclusively in activities in this field".

1.4 Creation of the Special Register of Spanish Fishing Boat Companies fishing exclusively in non-Community waters

On June 19, 2015, the Official State Gazette published Order AAA/1179/2015, of June 8, 2015, approving the Special Register of Spanish Fishing Boat Companies fishing exclusively in non-Community waters (RESAE, after its initials in Spanish), and setting out its structure and procedures. Therefore, although the RESAE had already been created formally in Order AAA/2406/2013, of December 23, implementing the Guidelines for the examination of state aid to fisheries and aquaculture (2008/C84/06), this Order actually brings under the same instrument both the creation and structure and the procedures of the RESAE, while also providing an application form.

The RESAE will be established in a computerized database incorporated in the Census of the Operating Fishing Fleet, included in the Fisheries Information System. The owners of fishing boats flying the Spanish flag and entered on the Community fishing fleet register, with their owner company entered on the RESAE, and which only fish for tunas or tuna-like fish outside Community waters and at a distance beyond 200 nautical miles from the base lines of the member states may be the beneficiaries of the aid contemplated in point 4.5 of the Guidelines for the examination of state aid to fisheries and aquaculture (2008/C84/06) or any instrument replacing it.

All of the above does not, however, imply or allow, in any way whatsoever, the application by those owners and fishing boats of any specific tax and social security measures and, in any way, equivalent to those already applying to the merchant fleet on the Canary Islands Special Register. In actual fact, although additional provision forty-one of Law 26/2014, of November 26, 2014, which amended (among other laws) Personal Income Tax Law 35/2006, expressly exempted (from personal income tax) 50 percent of the salary income earned from the sailing carried out on those vessels, it was expressly made conditional on its compatibility with EU legislation. It so happens that at present the European Commission has not only not approved the above as state aid, but also it has approved some new Guidelines in this respect (2015/C217/01 published in the Official Journal of the European Union on July 2, 2015) in which point 4.5 of the previous Guidelines, which to date had served as authorization, has been deleted, and this is complicating the matter to a great extent.

1.5 Revision of the technical requirements to be satisfied by marine equipment to be placed on board a ship

Order FOM/2258/2015, of October 23, 2015, published in the Official State Gazette on October 30, 2015 and set to enter into force on April 30, 2016, revises the technical conditions governing the requirements to be satisfied by marine equipment to be placed on board a ship.

It thus implements in Spanish law Commission Directive 2015/559/EU of 9 April 2015 amending Council Directive 96/98/EC on marine equipment, to adapt EU legislation to the amendments that have taken place in both the International Convention for the Safety of Life at Sea (SOLAS) and in other applicable international conventions and in the testing standards prepared by the international organizations for standardization.

The Order rules, on a transitional basis, that certain items of marine equipment listed as having been transferred which were manufactured before April 30, 2018 in conformity with procedures for type-approval already in force before that date may continue to be placed on the market and on board a ship.

1.6 Rules laid out on the procedure for depositing payment on the website to take part in judicial and notarial auctions. Impact on judicial and notarial sales of movable property (vessels and aircraft)

On November 7, 2015, the Official State Gazette published Royal Decree 1011/2015, of November 6, 2015, on the procedure for the system for depositing payment on the website of the sums required to take part in judicial and notarial auctions.

The changes carried out in the Civil Procedure Law (Law 1/2000, of January 7, 2000) by Law 19/2015, of July 13, 2015 on administrative reform measures concerning the justice system and the civil registry, involve, among other measures, the putting in place of an e-auction system on a single auction portal (auction portal), judicial and notarial auctions. The portal makes use of the remote media and service of the state tax agency (AEAT) for the depositing or posting of the bond by bidders.

Note must therefore be taken of these changes in relation to judicial and notarial sales of movable property, which includes ships and aircraft.

1.7 *Entry into force of the Railway Industry Law*

Law 38/2015, of September 29, 2015, on the railway industry was published in the Official State on September 30, 2015 and came into force the following day. It unifies and brings together in a new instrument the complete legal regime on railway transport in Spain.

Accordingly, while retaining a good many of the articles of its predecessor, Law 39/2003, of September 17, 2003 on the railway industry, which is expressly repealed, the new law incorporates in Spanish domestic law Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, which itself seeks to simplify and clarify the community legislative framework for railway transport, by recasting in a single instrument the directives in the first railway package.

One of the notable new changes is that the Council of Ministers may declare, on their own initiative, or at the request of the autonomous communities or the local authorities, that any services falling within the central government's powers, which are in insufficient supply or fail to satisfy minimum frequency, quality or price conditions, are made subject to the fulfillment of the obligations related to public service.

The Law also amends the legal structure of railway charges, by changing the structure of the charge for use of the service facilities and revising the pricing rules for the provision of services.

Lastly, the railway safety tax is removed and a tax for the provision of services and performance of activities in relation to railway safety is created, from which the revenues will be put towards funding the activities of the State Railway Safety Agency.

1.8 *Completion of the rules on nationality and registration of civil aircraft and the regulations on registration of civil aircraft*

On August 10, 2015, the Official State Gazette published Order FOM/1687/2015, of July 30, 2015, establishing additional provisions on civil aircraft nationality and registration marks.

The purpose of this order is to complete the applicable regime on the nationality and registration marks of civil aircraft registered in Spain, which was recently revised in Royal Decree 384/2015, of May 22, 2015, approving the Regulations on registration of civil aircraft, and establishing a single registration regime for all civil aircraft, including ultralight aircraft and private aircraft, which will enter into force on December 1, 2015, as discussed in previous Newsletters.

This new Order revises the regime on nationality and registration marks and incorporates the latest amendment to Annex 7 to the 1944 Chicago International Civil Aviation Convention.

It also includes the special rules on historical aircraft, defined as those meeting the criteria established in annex II (a) of Regulation No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of aviation and establishing a European Safety Agency, and those intended to be used for acrobatics, which may carry, following authorization from the State Air Safety Agency, provided they allow the aircraft to be identified easily, both the small-sized nationality and registration marks and the original registration or any other identifying anagram as part of their decoration, and the nationality and registration marks of the aircraft.

2. *Recent case law*

2.1 *The Supreme Court confirms that action for liability may be brought for loss or damage to goods even if no protest has been noted*

In its judgment of July 20, 2015, the Supreme Court's civil chamber dismissed a cassation appeal lodged against a judgment on an appeal, rendered by Barcelona Provincial Appellate Court and concluded that the absence of a protest submitted by the recipient of the goods, or the submission of a protest outside the 24-hour time limit provided in the former article 952.2 of the Commercial Code, did not prevent the right to bring action for liability for damage or defects in the goods carried by ship.

Starting out from the application to the facts of the case of the legislation mentioned above on the entry into force of the current Law 14/2014, of July 24, 2014 on maritime shipping, which unifies the regime on protests (art. 285) and on the time limit for action under the charter agreement, the Supreme Court analyzed the Hague Visby Rules, the Maritime Shipping Law of 1949 and the general legislation in the Commercial Code as regards the meaning and scope of the protest for damage in the goods, in relation to bringing subsequent action in court to claim for damage and losses.

Accordingly, stated the court, although it is true that there are precedents in which it has been construed that paragraph two of article 952.2 of the Commercial Code requires the prior protest, within the statutory time limit of twenty-four hours, to be able to bring action for liability, this principle needs to be changed and the article needs to be construed in accordance with the actual social context at the time when it must be applied, marked by an evolution in the legislation towards unifying the regime on notices or protests for loss or damage to the goods, in both carriage by sea and by land.

Thus, found the court, it must be concluded that in action for indemnification for losses, breakdowns or delays sustained by the goods, the one-year period must be reckoned from the delivery of the goods to the recipient or from the date on which they should have been delivered, and that where the recipient had failed to give written notice to the carrier or to his agent of the loss or the damage sustained by the goods, or gave written notice outside the time limit, it will be presumed, unless there is proof to the contrary, that the goods have been delivered as they were described in the bill of lading (art. 285.3 Maritime Shipping Law), and the absence of a protest or the noting of a protest outside the statutory 24-hour time limit will not prevent the right to bring action for liability in respect of damage to the carried goods.

In short, the Supreme Court changes the interpretation that it had made to date of the scope of the absence of the protest provided in the (now repealed) article 952.2 of the Commercial Code and confirms that action for liability can be brought for loss or damage to the goods even if no protest or complaint was noted in the period specified in that article.

2.2 *The Supreme Court analyzes the regime on aggravated liability of the carrier by land for the defective carriage of fragile goods*

In its judgment of July 9, 2015, the Supreme Court's civil chamber upheld the special appeal for a procedural infringement, and a cassation appeal, lodged by a company owning fragile machinery, against the various carriers of that machinery who, in its carriage by land, caused irreparable damage and had been able to rely, at first instance and on appeal, on the regime on the limit of liability provided in article 57 of Law 15/2009 on the agreement for carriage by land of goods ("Law 15/2009").

With regard to the assessment of evidence and interpretation of the law made in the previous judgments, the Supreme Court stated that the system in force as set out in Law 15/2009, despite providing, generally, a limit on the indemnification for loss or breakdown (article 57), lays down, nevertheless, that pursuant to article 62 of Law 15/2009, that limit of the carrier's liability does not operate where the damage or loss was caused by him or by his dependent or independent auxiliaries with acts involving willful misconduct or with a knowing and voluntary infringement of the legal duty acquired giving rise to damage which, without being directly desired, is a necessary consequence of their action.

According to the Supreme Court, the novel element consists in art. 62 of Law 15/2009 setting out two types of conduct that aggravate their liability: insidious or malicious acts in which direct misconduct may be found ("willful conduct") and any other acts that consist in a "knowing and voluntary infringement of the legal duty acquired which gives rise to damage which, without being directly desired, is a necessary consequence of their action ". Whereas the first type, direct misconduct, is conduct governed by the knowledge of causing unjust damage to the shipper, which is hard to prove, the second does not always imply an intention to cause damage or harm, but rather a voluntary infringement of a legal duty, and the outcome, which, while not intentionally sought, appears as a necessary consequence of their action, must be held to be willfully desired.

Considering the different types of conduct described in the appealed judgment, taken as a whole (knowledge that they were dealing with fragile goods, the damage caused by repeatedly irresponsible acts, etc.), the Supreme Court held that these types of conduct go beyond mere negligence and, according to the Supreme Court, show a knowing disregard for performance of the obligations under the contract.

Accordingly, the Supreme Court concluded that the limits of the carrier's liability do not apply, and therefore ordered the main carrier and the subcontractors (the actual carriers) to pay jointly and severally the whole amount of indemnification claimed by the shipper.

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