

Transport, Logistics and Shipping Newsletter

October 2024

In this newsletter, we provide a detailed analysis of the main legal developments affecting the transportation, logistics, and maritime sectors. We address the latest regulatory changes, ongoing legislative reforms, and their impact on the day-to-day operations of companies.

INTERNATIONAL LEGISLATION

Spain still has not transposed the Emissions Trading System Directive

Spain has not yet transposed the so-called Emissions Trading System Directive (EU Directive 2023/959), amending EU Directive 2003/87, although it came into force on January 1, 2024 in relation to the recording and accounting of emissions. Because the bill amending Law 1/2005 on the greenhouse gas emissions trading system (whose principal purpose is to transpose that directive) is still before the Lower House of Parliament, Spain has failed to comply with the deadline for transposition, set at December 31, 2023.

Forthcoming entry into force of the ship recycling convention

The Hong Kong Convention for the safe and environmentally sound recycling of ships (HKC) will come into force on June 26, 2025 following the accessions of Liberia and Bangladesh, among other countries. Bangladesh is one of the world's largest ship recycling countries in terms of capacity and Liberia is one of the major flag states in the world in terms of tonnage. With the accession of both of these states, the necessary tonnage criteria (40% of the gross tonnage of the world's merchant navy) for the entry into force of the HKC are met.

The HKC imposes responsibilities and obligations on all the parties involved in the ship recycling process, i.e., shipowners, shipyards, ports, flag states and recycling states. Following the entry into force of the HKC, ships that are sent to be recycled must have an inventory of hazardous materials, authorized facilities must submit a specific plan for each ship that is going to be scrapped and, lastly, governments must ensure that the facilities under their jurisdiction operate in accordance with HKC rules.

The instrument of accession of Spain to the HKC was published in the Official State Gazette (BOE) on May 24, 2024.

End of liner shipping consortia block exemption

[The liner shipping consortia block exemption Regulation](#) (EU Regulation 2009/906), which exempts international liner shipping consortia fulfilling certain conditions to comply with competition rules, has not been applicable since April 25, 2024, following the European Commission's decision not to extend application of that regulation.

The European Maritime Single Window will facilitate the speeding-up of maritime transport processes and procedures

The European Maritime Single Window environment -EMSWe- is set to come into force on August 15, 2025, under EU Regulation 2019/1239 establishing a European Maritime Single Window environment.

The European Maritime Single Window will facilitate the speeding-up of procedures and processes relating to maritime transport within the EU, by creating a smart European maritime space for the purpose of harmonizing the exchange of mandatory electronic information regarding the arrival, stay and departure of ships in ports. This includes information regarding ships, cargo, passengers, itineraries and other relevant aspects for the management and supervision of maritime transport.

This system will be implemented in seven European countries, Spain, Portugal, Sweden, the Netherlands, Finland, Italy and Slovenia.

In Spain the State Ports Authority (Puertos del Estado) will be the body designated to operate and manage the Maritime Single Window. For this purpose, the State Ports Authority will make the necessary information available to the competent Spanish and European authorities and to those of other Member States.

The underlying principle of this measure is the “single-step” principle. The way this works, under that regulation, is that member states must ensure that ship operators are asked only once to provide for each port call the requested information and that the relevant data are kept so that they can be reused.

Commencement of the application of the eFTI Regulation which digitalizes freight transport in the EU

EU Regulation 2020/1056 on electronic freight transport information (eFTI Regulation) started to be applied on August 21, 2024, and it is envisaged that it will be fully applied from December 2026 onwards when all European authorities must accept transport documentation in electronic form.

The eFTI Regulation seeks to digitalize freight transport in the EU by replacing paper documents with electronic data in transport by road, rail, river and air. It is expected to contribute to reducing the administrative burdens of operators and authorities, improve data security and ensure compliance with national and EU rules on freight transport.

The authorities of all EU member states will be required to accept electronic data shared by companies using certified secure platforms which comply with the eFTI Regulation, and which can be easily integrated into existing data management systems.

DOMESTIC LEGISLATION

Creation of the Independent Public Authority for the technical investigation of railway, maritime and civil aviation accidents and incidents

Law 2/2024 creating the new Independent Public Authority (Spanish abbreviation AAI) for the technical investigation of railway, maritime and civil aviation accidents and incidents was published in the Official State Gazette (BOE) on August 2.

The new AAI centralizes in a single administrative body the functions which were carried out up to now by the Commission for the Investigation of Railway Accidents, the Permanent Commission for the Investigation of Maritime Accidents and Incidents and the Permanent Commission for the Investigation of Civil Aviation Accidents and Incidents. The establishment of the new AAI will not mean the automatic demise of those commissions.

According to Law 2/2024, the purpose of the technical investigation undertaken by the new AAI is to establish the cause of a railway, maritime or civil aviation accident or incident, and to draw up, if appropriate, the appropriate safety recommendations, for the ultimate purpose of improving safety and preventing accidents. That technical investigation will not seek to establish liability or to assign fault.

Law 2/2024 is already in force except for the final provisions relating to the fees by which the AAI is funded, which will come into force on the day after the AAI is actually established.

A new update of the legislation governing drones/UAS is approved in Spain

Royal Decree 517/2024, implementing the legal rules for the civil use of unmanned aerial systems, contains certain important new features for the use of drones/UAS in Spain.

One of the most notable changes is registration as operator: drone/UAS pilots must be registered as operators. Registration is carried out online on the National Aviation Safety Agency (AESA) website and is valid for two years. In addition, the operator number must be physically indicated on all drones so that they can be identified.

Another new feature, in addition to the obligation to have mandatory insurance for certain categories, is notification of urban flights to the Ministry of the Interior. If drone users wish to fly their equipment in urban areas, they must notify this operation beforehand to the Ministry of the Interior. This must be done online at least five days in advance. The notification must include details such as the particulars of the operator, of the pilot, of the aircraft, and the exact area where it will be flown. Urban environments mean population centers with buildings, residential, shopping and industrial areas, or public recreational areas, such as beaches and parks. Furthermore, since the flight area must be checked in advance, the geographical zones on the ENAIRE Drones website must be consulted.

The new legislation seeks to promote the development of the drone sector in Spain, fostering innovation and responsible use of this technology. These measures are expected to contribute to sustainable growth of the drone market, while ensuring safety and respect for citizens' privacy.

Changes to obtain extensions of port concessions

Final provision two of Law 2/2024 has amended article 82.2 of the Revised State Ports and Merchant Shipping Law (TRLPEMM), approved through Royal Legislative Decree 2/2011. The amendment, which is already in force, has introduced several legislative changes for concession holders that hope for an extension of their port concession or are awaiting a decision on an application for an extension.

The new wording of article 82.2 of the Revised State Ports and Merchant Shipping Law still draws a distinction between ordinary and special extensions. There are two types of ordinary extensions depending on whether provision is made for the grant in the instrument, or certain investments classified as important are made. On the other hand, there are two types of special extensions depending on whether, in the case of concessions of strategic interest for the port, the concession holder makes an additional new investment or makes a financial contribution for the funding of certain port infrastructure.

The new wording does not alter the maximum term for each type of extension, which is kept at 50 years for ordinary extensions and at 75 years for special extensions. However, for the grant of any extension it is no longer required for one third of the term of the concession to have elapsed.

As a new addition to the law, the new wording of that article has made the following important changes:

- Limiting the maximum term of the two types of ordinary extension and the maximum number of extensions that can be granted;
- Increasing the level of investment to 50% for both types of special extension (excluding committed replacement investments); and
- Laying down a retroactive transitional regime which applies the mentioned changes not only to current concessions, regardless of the date on which they were granted, but also to applications for extension of the term of a concession which are being processed on the date of entry into force of Law 2/2024.

Lastly, it needs to be remembered that final provision four of the recent Law 13/2023 amending the General Taxation Law and other laws also changed the Revised State Ports and Merchant Shipping Law, namely, paragraph 1 of letter a) of the fifth heading of transitional provision two for the purpose of expressly clarifying that there can be no extension beyond 30 years of concessions or other instruments for occupancy of public property awarded before the entry into force of the original State Ports and Merchant Shipping Law 27/1992, which, together with other subsequent laws, form part of the Revised State Ports and Merchant Shipping Law now in force.

Amendment of the Overland Transport Regulations (ROTT): private hire vehicles registered abroad are allowed

On July 3, 2024, the Official State Gazette (BOE) published Royal Decree 613/2024 amending Royal Decree 1211/1990 approving the Regulations under the Overland Transport Regulations (Spanish abbreviation "ROTT"), in relation to the circumstances and conditions under which transport companies established in Spain can use vehicles registered in another member state.

That amendment of the ROTT has arisen during the transposition into Spanish law of EU Directive 2022/738 amending EU Directive 2006/1 on the use of vehicles hired without drivers for the carriage of goods by road.

In particular, the objective of the amendment is to change article 38.3 of the ROTT so that companies that engage in the public carriage of goods subject to transport authorization in accordance with Spanish legislation can rent for their activity vehicles registered in another member state (which would, therefore, be governed by the legislation of that other member state in relation to registration, instead of by Spanish legislation).

This is also allowed in the case of holders of an authorization for the carriage of goods who own vehicles registered in another member state.

In any event, the new wording of article 38.3 of the ROTT requires observation of the deadline provided for in domestic legislation for the mandatory registration of the vehicle in Spain.

Madrid approves new legal rules on private hire vehicles

The Madrid autonomous community government has passed Decree 5/2024 implementing Law 20/1998 regulating and coordinating urban transportation, in relation to the rental of private hire vehicles. The main changes in this new decree are as follows:

- Drivers must pass an exam which will assess the handling of digital devices with a navigation map, Spanish language, first aid, compliance with the rules and knowledge of the main locations, public offices, hotels and leisure centers in the Madrid autonomous community;
- It now stipulates that, at exceptional times of high demand for services, the fare may not exceed 75% of the base fare;
- A new service per seat has been imposed with individual payment, whereby there will be a main trip requested by the first passenger, to which secondary trips can be added, which must be on the route of the main journey;
- Five per cent of the fleet of private hire vehicles must be adapted vehicles; and
- A user hotline must be set up.

DRAFT LEGISLATION

The draft to amend the Directive on ship-source pollution moves ahead

In February 2024, the Council of the European Union and the Parliament reached a provisional agreement to ensure cleaner maritime transport.

To be specific, it has been agreed to amend EU Directive 2005/35 on ship-source pollution and on the introduction of penalties for infringements, for the purpose of imposing on those responsible for illegal discharges effective and proportionate deterrent penalties, for the purpose of protecting the sea from ship-source pollution.

For this purpose, the scope of the Directive will be enlarged to cover illegal discharges of noxious substances carried in packaged form or originating from wastewater or from refuse of ships and water and waste discharged. The system of administrative penalties will also be reviewed so as to ensure their deterrent nature.

This draft directive forms part of a broader maritime-environmental package, which will cover the investigation of maritime accidents, the fulfillment of the flag state's obligations, monitoring by the port state and the reform of the European Maritime Safety Agency.

The government approves the Bill amending the Revised State Ports and Merchant Shipping Law and the Maritime Shipping Law

The Government approved, on July 30, 2024, the Bill amending the Revised State Ports and Merchant Shipping Law and Maritime Shipping Law 14/2014 (Spanish abbreviation "LNM") which, if ultimately passed (as such or amended), would come into force two months after it is published in the BOE.

Although the bill, which was published in the Parliamentary Gazette on September 13, 2024, is very similar to the one drawn up in the previous legislature (which was not even examined), it is not exactly the same, because it contains certain new relatively minor features which, according to the Preamble, are justified merely because updating is required, as they cover gaps discovered in practice and, lastly, because they ensure better coordination between the two laws so as to avoid unnecessary overlapping and repetition.

We consider that the bill is significant, because it seeks to introduce important changes in the Revised State Ports and Merchant Shipping Law and in the Maritime Shipping Law, which are the two most important laws on ports and shipping.

Focusing exclusively on the Revised State Ports and Merchant Shipping Law, we highlight below the following new legislation:

- Defining bunkering as the supply of solid, liquid or gaseous fuel or that derived from any other source of energy used for the propulsion of the ship and for the general and specific supply of energy on board that ship while it is docked or anchored.
- Determining that that service is subject to the legal rules provided in the Revised State Ports and Merchant Shipping Law for commercial services, with observance in any event of the framework for the provision of services and the common rules of EU Regulation 2017/352 establishing a framework for the provision of port services and common rules on the financial transparency of ports.

- Clarifying that EU Regulation 2017/352 applies to all ports of general interest included in Annex I of the Revised State Ports and Merchant Shipping Law without any exception.
- Updating and simplifying the rules on the flagging of ships in Spain and Spanish shipping registers.
- Approving new rules on the Special Ship Register and the Special Shipping Company Register (REBECA) for the purpose of strengthening their competitiveness as a second register with the following principal new features:
 - Clarifying that the mandatory 50% of seafarers that are nationals of the EU and/or of the European Economic Area (EEA) must be calculated on the minimum safe manning and not on the manning of the ship;
 - Making the requirement to appoint a representative on the Canary Islands no longer apply to Spanish shipping companies but rather only to foreign companies, although that representative must be entered at the Commercial Registry, and a certificate of registration at the relevant registry of the country in question is also needed, proving the corporate purpose of the foreign shipping company;
 - Applying again the upper limit of 80 hours annual overtime provided for in the Revised Workers' Statute (article 35.2) to seafarers embarked on REBECA ships; and
 - Allowing the registration of craft over 15 meters in length which engage in an activity for commercial purposes or for gain, including recreational sailing, even though their gross tonnage is not equal to or greater than 100 GT.
- The new Special Ship and Recreational Craft Register for Ceuta and Melilla has been created.
- Waivers may be granted (exemption from the flag requirement for vessels to be Spanish flagged or authorized in an EU member state) for internal traffic.
- The waiver has been kept for cabotage traffic, although it has been specified that the flag requirement for vessels to be Spanish flagged or authorized in an EU member state will not apply:
 - To the carriage of goods between Spanish mainland ports where the origin or destination is a foreign port, provided that no goods are carried on a route running through Spanish maritime spaces which have as their origin and destination national ports reserved for Spanish flagged or EU merchant vessels; and
 - To the use of recreational vessels for a commercial purpose.
- Unmanned ship has been defined: the navigation through Spanish maritime spaces of unmanned ships and craft, including entry to ports and port terminals, is subject to the general rules, although they will need, among other requirements, the necessary specific and ad hoc authorization from the shipping authority which, after verifying that the navigation in question is safe, will establish the scope thereof and the operational limits for each case.
- In the event of exceptional circumstances, which have been adequately justified, the Directorate-General for Merchant Shipping (DGMM) may impose specific obligations on shipping companies operating scheduled or non-scheduled shipping services in internal waters, foreign cabotage, or cabotage outside domestic borders.

- Those specific obligations may consist of the suspension of sea carriage services which may be either an overall suspension or relate only to certain types of ships and craft, a reduction or increase in the number of trips or any other obligations that are applicable and proportional having regard to the circumstance justifying them.
- The circumstances justifying those obligations include any relating to health crises, maritime cyber risks, salvage, maritime safety, marine pollution prevention or any other serious public benefit or social interest reasons.
- The imposition of those obligations will give entitlement, where applicable, to the relevant amount of compensation for any additional costs incurred.
- The shipping authority may require shipping companies operating certain scheduled shipping services to maintain the capacity in the agreed fleet plan, to meet certain safety and environmental requirements in the ships used, to operate under established schedules, and to determine certain requirements for the sale of tickets and ability to change tickets. The participation in those shipping services will be subject to the conditions that will be laid down by the shipping authority, which may include the obligation to provide guarantees, surety bonds or equivalent types of security.
- A new body has been created, the Shipping Advisory Committee, attached to the Directorate-General for Merchant Shipping, which will take care of coordinating with other central government bodies holding powers over the marine environment, with the governments of coastline autonomous communities and with the maritime shipping sectors.
- It has been clarified that the limitation of liability for management of the pilotage service applies regardless of whether the liability is enforced in a civil, labor or criminal judicial proceeding, or in the administrative jurisdiction.
- The provisions on merchant shipping fees have been updated and recast.
- And the penalty rules have been updated and recast in relation to merchant shipping and central government port matters. Besides clarifying a few administrative procedural issues (administrative silence, injunctive relief, etc.), this has also involved defining new infringements (and the relevant penalties), including breach of the obligation to carry out shipping agency services in a Spanish port or in Spanish maritime spaces, where the legislation in force so requires or where the shipping authority so decides.

Turning to focus exclusively on the Maritime Shipping Law, which is now in its tenth year, we highlight below the following new legislation in the bill:

- New wording is given to the definition of craft to include jet skis.
- Claims in respect of the shipping agency services provided to domestic or foreign ships at Spanish ports or maritime spaces may be secured by a maritime lien within the meaning of the International Convention on Maritime Liens and Mortgages, in the same way as supply or repair claims.
- The minimum security required by the courts to arrest a ship has been changed from 15% to 5% of the amount of the sought claim, except for salary claims secured by a maritime lien, for which no security will be required.

- The security mentioned above may be any of the classes recognized by Spanish law, including a bank guarantee, surety bond or equivalent security.
- The equating of the liability system for transport terminal operators with the system for carriers has been clarified.
- The liability system for both-to-blame collisions has been amended resulting in joint liability for damage to cargo and joint and several liability only for personal injury to third parties, in line with international legislation.
- It has been clarified that charterer's liability rules for breach of the obligation to nominate a safe port and a safe berth must be applicable at both the loading and the unloading port.
- The rules on mandatory insurance for all recreational craft have been unified.
- And notaries' powers have been broadened in procedures for lost, stolen or damaged bills of lading, and a new procedure performed by notaries has been added in relation to the abandonment of recreational craft.

Public consultation period on the bill for a royal decree amending certain merchant shipping rules

The royal decree amending certain merchant shipping rules has been submitted for a public consultation period. Briefly, it is aimed at introducing the following changes in the following regulations:

- Royal Decree 1516/2007 determining the legal regime on scheduled maritime cabotage services and on shipping services of public interest:
 - The procedure for granting waivers has been speeded up and clarified; and
 - The number of waivers that may be granted each year has been restricted to prevent avoidance of the Spanish and other EU member state flag requirement.
- Royal Decree 332/2023 on compensation for the carriage of goods by sea and by air with origin or destination in Ceuta and Melilla:
 - The annual application period for the grant of amounts of compensation has been lengthened from the first quarter to the first six months of the year;
 - Subsidies are available for the carriage of hazardous goods with origin in Ceuta and Melilla, and it has been added also, for the first time, where those cities are the destination; and
 - Alongside the senders or forwarding agents, the recipients of hazardous goods are also classed as beneficiary of the amounts of compensation.
- Royal Decree 186/2023 approving the Maritime Shipping Regulations:
 - It has been clarified that the shipping authority's authorization is always needed for multiple enlist, and also that it is restricted to ships operated by the same shipping company;

- The Habormaster's Office has been allowed to stipulate a general regime for the carrying out of off port limit operations in its scope. To comply with the regime, authorization will be needed for those operations, unless express denial is given; and
- The minimum time period for applying for authorization of the off port limit operation is between 24 and 48 hours.

The Sustainable Mobility Bill still has not been approved

The government approved the Sustainable Mobility Bill (PLMS) on December 13, 2022 and sent it to parliament to start the parliamentary process.

Additionally, the approval of this bill appeared in the Addendum to the Recovery, Transformation and Resilience Plan that the government sent to the European Commission.

Its passage through parliament has been held up since it came before the Transport Commission in the Lower House due to failing to achieve sufficient parliamentary support.

The main points addressed by the PLMS are:

- Recognition of mobility as a social right (accessibility and inclusion, with particular emphasis on rural areas);
- Transport sustainability, giving priority to active mobility and accessible collective public transport;
- Digitalization, introducing data protection measures and creating a sandbox for developing innovative solutions in relation to transport;
- The quality of public services;
- The creation of a Sustainable Mobility System, for coordination across all public authorities in relation to mobility matters;
- Imposing on companies with more than 500 workers per workplace or 250 per shift the obligation to have sustainable mobility-to-work plans; and
- Strengthening transport and mobility planning, by creating a Countrywide Strategic Planning Instrument and Simplified Sustainable Urban Mobility Plans for municipalities with between 20,000 and 50,000 inhabitants.

JUDGMENTS AND DECISIONS

The Constitutional Court releases private hire vehicles in the Balearic Islands from the need for 30-minute pre-bookings

The Balearic Island government amended Law 4/2014 on road transport and sustainable mobility through Decree-Law 1/2019 on urgent measures on the exploitation and monitoring of the activities of private hire vehicles and other road transport measures.

The Supreme Court submitted a request for a ruling on unconstitutionality to the Constitutional Court due to considering that the need to pre-book private hire vehicles could breach the freedom to conduct a business guaranteed in article 38 of the Spanish Constitution.

The Constitutional Court has recently held that the new Balearic Island legislation is unconstitutional, confirming the Supreme Court's insight that the obligation would breach the freedom to conduct a business enshrined in article 38 of the Spanish Constitution.

The Constitutional Court concluded in this respect that, for a measure restricting the freedom to conduct a business to be compatible with constitutional law, it must seek a constitutionally legitimate aim and be adequate for that purpose.

In this specific case, while the Constitutional Court considered that the sought aim (balance between the taxi and private hire vehicle sectors) was legitimate, it found that the Balearic Island lawmakers were at fault for a lack of adequate justification for the suitability of the measure.

The Constitutional Court also held that the measures place private hire vehicles at a competitive disadvantage in the only segment where they operate (pre-bookings) and that the measure does not make a positive contribution to the protection of consumers. For that reason, it is simply an unreasonable obstacle to the conditions for providing private vehicle hire services.

The Constitutional Court validates the rules on private hire vehicles in Andalucía

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The Constitutional Court validates the rules on private hire vehicles in Andalucía

Andalusian Decree-Law 8/2022 amended Law 2/2003 on Urban and Metropolitan Passenger Transport Services in Andalucía to determine a legislative framework for authorizations to rent private hire vehicles in that autonomous community.

Parliamentary group Unidas Podemos lodged an action for unconstitutionality against that law for not meeting, in its opinion, the requirement enabling the urgent adoption of laws and breaching local autonomy and the constitutional distribution of central government powers.

The Constitutional Court has dismissed that action for unconstitutionality by holding that the new legislation on private hire vehicles in Andalucía is consistent with the Constitution, in very similar terms to those used in its earlier judgment 88/2024 relating to the legislation on private hire vehicles in the Madrid autonomous community.

In particular, the Constitutional Court held that autonomous community governments have powers to regulate rentals of private hire vehicles providing services in urban areas and carried out entirely in those areas, and they have the power to graduate the scope and intensity of local intervention by reference to the existing relationship between local and wider interests within those matters or subjects.

Additionally, the Constitutional Court dismissed allegations of an encroachment on the central government's powers in transport matters, by holding that the Andalusian legislation had been issued under an autonomous government power to regulate the services of private hire vehicles in urban areas, and its provisions only implied authorizing to act in urban areas in Andalucía any private hire vehicle drivers who already had a license to operate nationally.

European and Spanish judges rule on judicial powers and the bill of lading

The Sixth Chamber of the CJEU has replied, in a judgment dated April 25, 2024, to three references for a preliminary ruling submitted by Pontevedra Provincial Appellate Court on the interpretation of article 25.1, of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

A description of two provisions in the Maritime Shipping Law is needed here, namely, articles 251 and 468.

Article 251 of the Maritime Shipping Law provides that: "A transfer of the bill of lading shall have the same effects as the delivery of the detailed goods, without prejudice to any criminal or civil action to which anyone who has been unlawfully dispossessed of those goods shall be entitled. The transferee of the bill of lading shall acquire all the rights and actions of the transferor with respect to the goods, except for jurisdiction and arbitration clauses, which shall require the transferee's consent in the terms set out in chapter I of title IX".

Article 468 of the Maritime Shipping Law, on jurisdiction and arbitration clauses, states that "without prejudice to the terms of the international conventions in force in Spain and in European Union acts, clauses for consent to a foreign jurisdiction or arbitration in a foreign country, contained in contracts for use of the vessel or in contracts for ancillary shipping services shall be rendered null and void and deemed not to exist, where they have not been negotiated individually and separately. In

particular, the insertion of a jurisdiction or arbitration clause in the printed terms and conditions for any of the contracts mentioned in the preceding paragraph shall not evidence, by itself, satisfaction of the requirement it contains.

In its judgment, the CJEU determined that:

- The jurisdiction clause is enforceable against a third party if, on acquiring that bill of lading, it is subrogated to all of the rights and obligations of one of the original parties to the contract, which must be assessed in accordance with national substantive law as established by applying the rules of private international law of the member state of the court seised of the dispute; and
- Article 25.1 of Regulation 1215/2012 precludes national legislation which excludes the subrogation of the third-party holder with respect to a jurisdiction clause incorporated in the bill of lading except where it has been negotiated individually and separately.

After the CJEU delivered that judgment in the terms described, Pontevedra Appellate Court delivered a judgment on September 16, 2024, holding to be enforceable a clause conferring jurisdiction on the English courts existing on the bill of lading examined in the proceeding and declared that the Spanish courts did not have jurisdiction to hear the case.

The Supreme Court recognizes a bidder's legitimate right to challenge a port tender process

Judgment 1771/2023 delivered by the Supreme Court (Panel 5 of the Judicial Review Chamber) on December 21, 2023 has upheld a cassation appeal lodged by a shipping company against an earlier judgment delivered by Andalucía High Court dismissing a challenge of the specifications for a tender called by the Bahía de Algeciras Port Authority (APBA) for the grant of administrative authorizations for exploitation of berths, facilities, a check-in area and vehicle embarkation areas for the scheduled passenger service at the port of Tarifa.

The supreme court judgment recognized the standing of a shipping company to challenge the specifications of a tender for port authorizations. It held that the shipping company had standing to appeal against the specifications, because it had a legitimate interest in respect for the lawfulness of the proceeding and in having a right to a concession recognized for it instead of an authorization. The judgment found that a bidder has standing to challenge tender specifications if the subject-matter of the appeal relates to the subject-matter rather than the lawfulness of the conducted procedure. Lastly, it refused to accept that the appellant could take action against its own acts or seek an adverse effect on them by having the tender rendered null and void.

The Valencia Appellate Court clarifies the interest applicable to marine insurance

The Maritime Shipping Law, which applies to marine insurance, expressly states (article 406) that for any matters not provided in the law, the Insurance Contract Law (LCS) is applicable, which applies generally to other insurance policies.

Both the Maritime Shipping Law and the Insurance Contract Law contain rules on the delayed payment of indemnification by the insurance company. Namely, article 437.2 of the Maritime Insurance Law provides for late-payment interest at the statutory rate, payable by insurance companies that fail to pay the effective amount of indemnification within a 15-day period from acceptance of the insured's calculation of the claim.

Whereas article 20 of the Insurance Contract Law, imposes late-payment interest on insurance companies that fail to pay within the statutory period. This is punitive interest serving as a penalty and consists of the statutory interest rate in force when it accrues, increased by 50%. It accrues daily and a judicial claim is not needed. However, after the end of two years from the loss, the annual interest cannot be below 20%.

In this context, the Valencia Provincial Appellate Court (Panel 9) has held (judgment 2/2023 of January 10, 2023 and judgment 310/2022 of April 5, 2022), in relation to marine insurance, that instead of applying the late-payment interest provided in article 437.2 of the Maritime Shipping Law, the punitive late-payment interest under article 20 of the Insurance Contract Law should be applied.

In particular, those judgments order the insurance companies in question to pay the late-payment interest under article 20.4 of the Insurance Contract Law, after holding that the requirement under article 437.2 of the Maritime Shipping Law had not been met, because no calculation of the claims existed due to having been expressly rejected by the insurance companies.

A member state can impose tax on vehicles only if their normal use is in that country

The Central Economic-Administrative Tribunal (TEAC) has delivered a decision, dated April 17, 2024, addressing the tax implications of the use in Spain of a vehicle registered in other EU member states, by an individual or entity resident in Spain, and concluded that “the mere use in Spain of a vehicle registered in another member state if normal use in Spain or the vehicle remaining in Spain has not been evidenced does not give rise to the right to claim excise tax on certain modes of transport under article 65.1.d) of the Law on excise and other special taxes in relation to additional provision one of that law”.

In the context of recreational sailing, this decision may have significant implications for the owners of yachts and recreational craft registered in other EU countries and sailing in Spain.

Context of the decision

The excise tax on certain modes of transport is charged on the first final registration of modes of transport in Spain. However, the legislation also allows the use of modes of transport registered abroad to be taxed if their normal use is in Spain.

The decision examines the use in Spain of a mode of transport registered in another EU member state by a Spanish resident. The main issue posed is whether the mere use of that mode of transport, if it has not been registered in Spain, could give rise to excise tax on certain modes of transport, or the vehicle registration tax.

This view was taken by the head of the Customs and Excise and Special Taxes Department at AEAT, supported by the following arguments:

- Law 38/1992 on excise and other special taxes does not require either the vehicle remaining in Spain or its normal use in Spain to consider that the taxable event under article 65.1.d) has occurred; and
- Use of an unregistered mode of transport in Spain by a resident is sufficient to consider that the taxable event envisaged in article 65.1.d) of the Law on excise and other special taxes has occurred, and the tax cannot be made to depend on the taxable person's intentions.

TEAC's arguments

In this decision, TEAC draws a distinction between sporadic and temporary use and continued or permanent use of a mode of transport. It notes in this connection that the simple fact of making temporary use of a mode of transport registered in another member state does not automatically give rise to the vehicle registration tax, if it can be shown that the vehicle is in Spain temporarily and is not normally used in Spain.

If, however, it is identified that the mode of transport, although it is registered in another member state, is used normally or on permanent basis in Spain, then using or driving it could be subject to the vehicle registration tax.

This view is in line with the guidelines in the CJEU's case law, in, among others, the Prefettura di Massa Carrara judgment delivered on December 16, 2021, in case C-274/20, as well as in the decision dated October 19, 2022, in the Comune di Portici case, number C-777/21. In that judgment, the CJEU held, essentially, that a member state can impose an obligation to register a vehicle already registered in another member state and therefore make it subject to a registration tax where that vehicle is used, on a permanent basis, essentially in that first member state or if it remains there. But it has clarified that if these requirements are not met, the connection with one member state of the vehicle registered in another member state is weaker, which means that another justification for the restriction in question is necessary.

Conclusion

The CJEU's case law supports the principle that member states can impose taxes on vehicles registered in another EU country only if their use in that country is normal or permanent, which ensures that disproportionate taxes are not applied to mere temporary use.

TEAC's decision follows this line of interpretation, noting that the imposition of Spanish domestic taxes on modes of transport registered in other countries must meet the principle of proportionality supported by the CJEU. This decision makes an important change to the method of interpreting the excise tax on special modes of transport with respect to the use in Spain of modes of transport registered in other countries by residents.

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