

DECEMBER 2017

THE TREATY ESTABLISHING  
THE TRANSPORT COMMUNITY  
BETWEEN THE EUROPEAN  
UNION AND THE SOUTH EAST  
EUROPEAN PARTIES

SPAIN FINED FOR NOT  
ENFORCING CJEU JUDGMENT

COMPENSATION FOR DELAY  
OR CANCELLATION OF A  
FLIGHT MUST BE CALCULATED  
ACCORDING TO THE DIRECT  
DISTANCE BETWEEN POINT OF  
DEPARTURE AND DESTINATION



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# 1

## European Union and International

### 1

#### LEGISLATION AND LEGISLATIVE DEVELOPMENTS

##### 1. The treaty establishing the Transport Community, between the European Union and the South East European parties (the Republic of Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro and the Republic of Serbia) has been published.

Its aim is the creation of a Transport Community in the field of road, rail inland waterway and maritime transport as well as the development of the transport network between the European Union and the South East European parties (the "Transport Community").

The South East European countries, the former Yugoslav Republic of Macedonia, Montenegro, the Republic of Serbia and the Republic of Albania are candidate countries for membership the European Union; and Bosnia and Herzegovina have also applied for membership. It is noted in relation to Kosovo that the procedures of the member states of the European Union may apply when receiving documents issued by Kosovo authorities under the Treaty.

According to the preamble, the Transport Community will be based on the progressive integration of transport markets of the South East European parties into the European Union transport market on the basis of the relevant *acquis*, including in the areas of technical standards, interoperability, safety, security, traffic management, social policy, public procurement and environment, for all modes of transport excluding air transport.

### 2

#### RECENT CASE LAW

##### 1. Spain fined for not enforcing CJEU judgment

On July 13, 2017 the Court of Justice of the European Union (CJEU) ordered Spain to pay a lump sum of €3 million for a breach by Spain in enforcement of the judgment of December 11, 2014,

Commission v Spain (C 576/13, EU:C:2014:2430), in which the European Court declared that Spain had failed to fulfill its obligations under article 49 TFEU, by obliging enterprises of other member states wishing to carry on cargo handling services at Spanish ports of general interest first to register with the Dockers' Management Public Limited Liability Company (Sociedad Anónima de Gestión de Estibadores Portuarios) and, as appropriate, to hold shares in that company, and secondly, to employ as a priority workers provided by that company, including a minimum number on permanent contracts.

The Court declared that Spain had failed to fulfill its obligations under article 260.1 TFEU, by failing to adopt the measures necessary to comply with the judgment of December 11, 2014 by the expiry of the period prescribed in the letter of formal notice sent by the European Commission, namely, September 20, 2015. And it ordered Spain to pay a lump sum of €3 million to the European Union.

##### 2. Compensation for delay or cancellation of a flight must be calculated according to the direct distance between point of departure and destination

The CJEU ruled on September 7 that the compensation to passengers in the event of cancellation or long delay of a flight with a connecting flight must be calculated according to the distance "as the crow flies" between the points of departure and arrival in the journey, and not on the basis of any greater distance by reason of the connecting flight being re-routed.

It held that the fact that, as a result of the connecting flight, the distance actually traveled is greater than the distance between the airports of departure and arrival, does not have any influence on how the compensation is calculated. And that the nature of the flight, (direct or with a connecting flight) does not have an impact on the extent of the inconvenience suffered by passengers.

The Court considers that the EU regulation does not make a distinction between a direct flight or an air journey with connecting flights, and therefore infers that in both cases the passengers must be treated "in the same way" regarding calculation of the amount of compensation.

# 2

## Spain

### 1

#### LEGISLATION AND LEGISLATIVE DEVELOPMENTS

##### **1. Royal Decree 873/2017, of September 29, 2017, on the grant of aid to the shipbuilding industry for research and development and innovation has been published**

The aim of this royal decree is to adapt the Spanish domestic legislation on support to the shipbuilding industry in the form of direct aid for R&D&I to the latest amendments to EU law, the consolidation of the amendments made to the wording, and the separation of the two aid instruments still in force, while keeping the assistance in the form of aid for R&D&I.

There are particular reasons in the public interest and related to social and economic interests for conducting initiatives to support shipbuilding by granting direct subsidies, such as: the pulling effect on, direct and induced, employment, which is particularly important in the regions where the production facilities are located, the innovative nature of the activity and its significant export component. Additionally, it gives shipbuilders the chance to obtain similar types of R&D&I aid to those offered by other member states to their shipyards.

Therefore, further to Royal Decree 442/1994, of March 11, 1994, they are subject to article 22.2.c) of the General Subsidies Law, Law 38/2003, of November 17, 2003, on direct grant aid, under which a royal decree was necessary which, pursuant to article 28.2 of that law, approved the special rules on the subsidies set out in that article 22.2.c) and gave continuity to the previous royal decree on aid to the industry, out of the restructuring fund.

##### **2. Royal Decree 874/2017, of September 29, 2017 on official support in the form of a subsidy for the interest rate on shipbuilding credit facilities**

Approval has been given to Royal Decree 874/2017, aimed at adapting Spanish domestic law on support to the industry, Royal Decree 442/1994, of March 11, 1994, to the latest changes in EU legislation

and consolidate the amendments to the wording, while keeping the official support for credit facilities provided by credit institutions to domestic or foreign shipowners, to shipyards and to third parties, subject to the limits and conditions set out in the OECD Arrangement, thereby creating a level playing field with respect to the conditions in which Spanish shipyards compete on the international market and encouraging export activities in this industry.

The aim of this royal decree therefore is to define the official support in the form of a subsidy towards the cost of interest on credit facilities provided by credit institutions to domestic or foreign shipowners, to shipyards and to third parties for the construction or alteration of ships at Spanish shipyards.

##### **3. Decision by Spanish port authority Puertos del Estado approving the validation procedure for stevedore workers**

In a decision rendered on July 10, 2017, Spanish port authority Puertos del Estado approved the procedure for validating stevedore workers, who, on the entry into force Royal Decree-Law 8/2017, of May 12, had completed more than 100 days' work in cargo handling services in any EU Member State, and in any stevedoring, or cargo loading, offloading, and transfer work that had been excluded from the service pursuant to article 2.g) of Royal Decree-Law 2/1986, of May 23/1986.

### 2

#### RECENT CASE LAW

##### **1. Probative force of flight screenshots questioned**

Central Judicial Review Court no 1 has overturned a penalty imposed by the Spanish air security agency AESA, on a drone operator for the commission of a number of administrative offenses. The operator was accused of committing the offenses by flying over an agglomeration of people, making nocturnal flights, and breaching the requirements to carry out airborne activities for audiovisual filming projects.

The Court overturned the imposed penalties by arguing that the views in videos and screenshots made by a public official are not sufficient to acquire probative certainty

The examiner in the AESA case disallowed all the items of evidence proposed with a breach of the legislation, by arguing that, to acquire probative certainty, the views in those videos and screenshots must at least be certified by an authorized public official with certifying powers; the certificate must mention the equipment used to make the screenshots, the PC and software used to process the data, and have attached technical certificates on their verification, evidencing that they were in perfect working order, in addition to mentioning the capture dates of the links and screenshots, the contents and storage of the information, together with the technical procedures ensuring the reliability and authenticity of the captured data, so that the petition for evidence related to the expressed elements may not be considered superfluous or unrelated to the contents of the proceedings and should be admitted as incriminating evidence in the penalty proceeding.

6

## **2. Supreme Court confirms that the liability for maritime claims resulting from damage caused by a recreational vessel moored at a port cannot be limited**

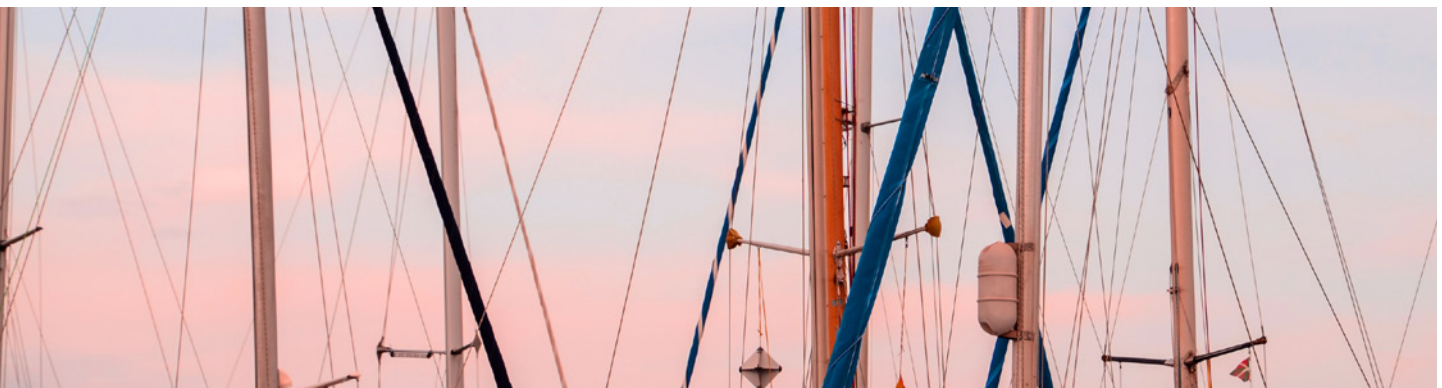
In a decision rendered on June 28, 2017, the Supreme Court (Civil Chamber) failed to admit the cassation and special appeals for procedural infringements lodged by a number of insurers of a recreational vessel against the judgment rendered at second instance by Barcelona Provincial

Appellate Court, ordering them to pay damages for the losses caused to adjacent yachts by a fire on a moored yacht at Port Vell in Barcelona.

Following and confirming the previous line of reasoning given in its judgment of May 6, 2015, the Supreme Court held that the facts at issue in the appeal fell outside the scope of application of the Convention on Limitation of Liability for Maritime Claims, 1976 (after its successive amendments), since the claims were not made in connection with an activity for “operation of the ship” which requires the element of operation of the ship, namely, the existence of a business activity articulated around the ship, incompatible with the nature and use as a recreational vessel of the vessel whose fire caused the losses for which the damages were being claimed.

Aware of the problematic nature of the issue, the Chamber held that the limitation of liability under that convention is only justified if a business activity is conducted, because by being a privileged regime regarding full compensation for damage and losses which constitutes the general rule in the law on damages, that privileged regime is not justified when the vessel whose use or ownership has caused the damage is a recreational vessel.

In this second judgment, the Supreme Court has laid down case law in relation to a complex and disputed issue, and it appears to construe the Convention more restrictively than in other jurisdictions.



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