



Contents

3	Introduction
4	Organising Committee
4	Academic Committee
5	Invited Speakers
29	Panel
33	Presentations Abstracts

Introduction

Dear participants,

Welcome to the 2. International Transport and Insurance Law Conference — INTRANSLAW Zagreb 2017. We hope this conference will repeat the success of the previous one, held in 2015, which attracted more than 200 participants from 20 countries, 40 esteemed local and foreign presenters and 12 panelists, thus becoming a distinguished event for the representatives of the industry, public sector, justice and science. The biggest novelty is that the official organiser of this year's conference is Croatian Transport Law Association (CTLA), founded in 2016. Our main goal is, by organising various activities (workshops, scientific forums) to promote the development and discussion on transport law and contribute to its better application in practice.

In order to ensure that INTRANSLAW continues to be recognised as a scientific–expert forum which covers the latest topics in transport and insurance, while having in mind the need to systematically educate and specialise lawyers in these fields, we have decided to dedicate this conference to all the challenges that lie ahead in the future. New technologies, business models, globalisation, influence of climate changes on transport ask for a specialised forum with diverse audience which is capable of addressing open issues and propose their solutions.

If we consider the strategic importance of transport industry and the fact that all transport modes are already subject of complex set of both European and international rules, the exchange of knowledge, experience and best practice has become imperative — not only in Croatia or the region, but worldwide. As always, we have tried to include all the members of the „value chain“ (industry, justice, public administration, regulatory agencies, science) to create a unique platform for the exchange of knowledge for all of us, with a recognised value both locally and globally.

Due to all this, we have once again tried to come up with a programme which caters to your diverse interests and areas of expertise, taking place in the next two days in two rooms of the Forum Zagreb Congress Centre. The programme includes over 40 presentations on wide variety of topics, by leading local and foreign experts, and a panel discussion on the future of insurance of transport risks. We believe that this approach should not only contribute to the competitiveness and the development of business of local and regional transport and insurance industry, but also create a new ways of work and cooperation among different and established experts from various fields of transport.

We thank you for your active participation and for recognising the significance of this project. A special thank you to all our financial partners: without your support we could not have succeeded in creating such an ambitious project.

We wish you a successful and nice stay at the INTRANSLAW Zagreb 2017!

Organising Committee

intranslaw
Zagreb 2017

Organising Committee

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Ministry of Construction, Transport and Infrastructure of
the Republic of Serbia, Sector for Waterborne Transport
and Safety of Navigation, (Belgrade, Serbia), Advisor



KEY–NOTE SPEAKERS



Maja Bakran Marcich



Deputy Director-General, DG Mobility and Transport, European Commission (European Union)

Nationality: Croatian

Academic qualifications:

1997: Annual Diplomatic Course at the Diplomatic Academy of the Ministry of Foreign Affairs — Ministry of Foreign Affairs, Zagreb

1996: M.Sc. Degree in Human Genetics, Faculty of Medicine, University of Zagreb

1992: Graduated from Faculty of Natural Sciences, University of Zagreb

Degree in Biological Engineering — Ecology

Professional experience in the European Institutions:

As from 1 December 2016: Deputy Director-General — Directorate-General Mobility and Transport (MOVE)

Professional experience before joining the European Institutions:

06/2016 — 11/2016: Advisor to the Minister of Foreign and European Affairs, Ministry of Foreign and European Affairs of the Republic of Croatia, Zagreb

09/2015 — 05/2016: Director-General for European Affairs, Ministry of Foreign and European Affairs of the Republic of Croatia, Zagreb

04/2012 — 08/2015: Director for European Affairs, Ministry of Foreign and European Affairs of the Republic of Croatia, Zagreb

09/2011 — 03/2012: Advisor to the Deputy Prime Minister and Minister of Foreign Affairs and European Integration of the Republic of Croatia, Zagreb

08/2005 — 08/2011: Head of Unit for Sectoral Issues, Mission of Croatia to the EU, Bruxelles

10/1999 — 07/2005: First Secretary, Mission of Croatia to the EU, Bruxelles

03/1998 — 09/1999: Advisor to the Deputy Prime Minister and Minister of European Integration of the Republic of Croatia, Zagreb

ster and Minister of European Integration of the Republic of Croatia, Zagreb

07/1996 — 02/1998: OSCE Desk-Officer, Ministry of Foreign Affairs of the Republic of Croatia, Zagreb

10/1994 — 06/1999: Research Assistant, Institute for Anthropological Research, University of Zagreb

09/1993 — 09/1994: Advisor, Delegation of the European Commission, European Community Monitoring Mission, Zagreb

12/1992 — 08/1993: Junior Research Assistant, Institute for Anthropological Research, University of Zagreb

10/1991 — 11/1992: Interpreter and Liaison Officer, Croatian Liaison Office to the European Community Monitoring Mission (ECMM), Zagreb

Honours:

1996: Order of merit (Croatian Interlace) awarded by the President of the Republic for extraordinary contribution to progress and promotion of Croatia and the wellbeing of its citizens

2016: Chevalier dans l'Ordre national du Mérite awarded by the President of the French Republic for exemplary contribution to the European integration of Croatia, achievement of European goals and contribution to bilateral relations

Language Skills:

Croatian (mother tongue); English (proficient user); German, French, Italian (basic user)



European Commission's Agenda for the Future Mobility in the EU

The Commission is putting forward an agenda for the future of mobility in the EU. Comprehensive package of regulatory and support measures has the purpose to make clean, competitive and connected mobility for all a reality and allow Europe to be a global leader in shaping the future of mobility. First step was the 1st mobility package published on 31 May, while the second mobility package will be published in November 2017, to be followed by the third in spring 2018. One of the key issues is the need to accelerate Europe's transition towards zero-emission mobility. The Union needs a comprehensive regulatory framework comprising action on clean technologies through improved emission standards, and on deployment of low-carbon fuels.

Global innovation and competition are accelerating and the automotive sector faces a fundamental transformation process. EU wide carbon dioxide emissions standards are a strong driver for innovation and efficiency and will contribute to strengthening competitiveness and pave the way for zero and low-emission vehicles in a technology-neutral way. The Commission has started work to revise the post 2020/2021 carbon dioxide standards for cars and vans. Options under review include specific targets for low and/or zero emission vehicles. EU standards for heavy duty vehicles are also under consideration by the commission. The EU must also harness the opportunities of digitisation and automation to build an efficient and interconnected mobility system providing users with safe, attractive, intelligent, seamless and increasingly automated mobility solutions. Digitisation helps to make transport and logistics operations more efficient by improving traffic flows and optimising the use of infrastructure, reducing administrative burdens for operators and allowing a better combination of public and private transport. It also contributes to the decarbonisation of transport by facilitating shifts to cleaner transport modes and promoting higher passenger vehicle occupancy rates.

The Commission is supporting the coordinated rollout of mass market partially automated and connected vehicles by 2020 by taking forward a wide range of policy, regulatory, public support actions and stakeholder platforms in cooperation with member states and industry. A coordinated approach to spectrum management and the rollout of 5g technologies will be crucial enablers for these new services. The challenges are still great for higher levels of automation as well as for the next generations of communication technologies. Large-scale testing on the open road is essential to make progress on the technology, foster cooperation amongst the different actors and facilitate public acceptance. Such tests are already possible in several member states and are supported by dedicated calls in Horizon 2020.

Mobility is changing fast. At the beginning of an era of connected and automated vehicles, shared mobility, zero emissions, and easy shifts between transport modes, it is high time to prepare the future of mobility in Europe. Europe must move from the fragmented transport networks

of today towards an integrated, modern and sustainable mobility system, which is connected to the energy and digital networks. Citizens and businesses must be offered safe, smart and seamless mobility solutions across Europe, and European infrastructure must be among the most advanced of the major global economies.

Maja Bosnić Tabain



Department of Claims in Marine, Aviation, Transport and Credit Insurance, Croatia Insurance Plc. (Croatia)

Maja Bosnić Tabain, Director of the Department for Processing Vessel, Aviation, Transport and Loan Insurance Claims. She graduated from the Faculty of Law of the University of Split in 2004. She passed the bar exam in 2007. From 2004 until 2008, Ms. Bosnić Tabain worked at the Law Office of Dijana Vojković in Zagreb. She is a member of the Croatian Maritime Law Association and Croatian Association of Insurance Law. In 2013, she attended a professional advancement programme in London at the UK P&I Club, the Lockton brokerage firm and commercial law firm Hill Dickinson LLP. In 2017, Ms. Bosnić Tabain also attended the Residential Training Course organised by the North of England Club.

Marina Operator Liability Insurance in Croatian Business Practice with a Focus on the Topical Legal Issues

Nautical tourism port operator liability insurance is liability insurance intended for nautical tourism port concession holders, i.e. legal or natural persons who perform business activities and provide tourism services in nautical tourism as well as other services forming part of tourism consumption (trade, hospitality etc.) and who operate a port of nautical tourism. It is a type of voluntary insurance.

Nautical tourism port operator liability insurance provides coverage for liability of the operator of a port of nautical tourism, i.e. its contractual (towards service users) and non-contractual liability (towards third parties). In the context of liability insurance, an insured event occurs when liability of the insured, i.e. of the nautical tourism port operator, for damage covered under the insurance is established. On the basis of the Nautical Tourism Port Operator Liability Insurance Agreement, the insurer therefore undertakes to compensate the insured for compensation amounts the insured is obligated to pay to third parties based on its liability for damage suffered by such third parties due to liability of nautical tourism port's concession holder, up to the coverage limit however.

The insurance agreement further provides coverage for civil liability of the nautical tourism port operator for actual damage and loss of profit in relation to its service users and third parties, while in certain cases the insurer may limit its obligation to bodily injury and property damage only. In any case, the insurer's obligation will be limited by the total coverage amount. Furthermore, up to the coverage limit, the insurer will also bear lawsuit and other justified expenses incurred in determining the insured's liability and the cost of measures undertaken at the insurer's request or in agreement with the same for the purpose of preventing unjustified and exaggerated third party claims.

Nautical tourism port operator liability insurance agreements first appeared at the beginning of the 1980s. The terms of the first nautical tourism port operator liability insurance agreements were derived from the first Berth Agreements and Maritime Casco Insurance Policies with the belonging conditions. Since then, the key provisions have remained the same and no significant amendments have been made in order to suit the needs of modern times. The insurers operating on the territory of the Republic of Croatia usually offer similar terms of insurance that do not differ in any important aspect.

Liability for intentional wrongful acts or omissions on the part of the nautical tourism port operator are thus always excluded from the insurance coverage, and it is also common practice for insurers to exclude liability for damage caused by gross negligence on the part of the nautical tourism port operator, its employees or subcontractors from the coverage. Nautical tourism port operators liability insurance coverage also usually explicitly excludes damage caused by neglect, wear and tear of the berthed vessel, damage caused by latent vessel defects, damage caused by an act or omission on the part of the vessel



owner, crew or other persons on-board the vessel, damage caused by war and similar events, damage resulting from the theft of works of art, items made from precious metals, money, securities and similar, damage caused by rodents, damage caused by freezing of the engine cooling system, damage caused by bad weather, or damage caused by theft of items that are not included on the inventory list.

Furthermore, it's common practice for the insurers to stipulate, as a precondition for arranging coverage, that the nautical tourism port operator complies with all the prescribed standards and that it offers its services in accordance with general operating terms and conditions pre-approved by the insurer. To arrange nautical tourism port operator liability insurance coverage under agreements that go beyond the limits of such pre-approved general operating terms and conditions usually requires special consent issued on a case by case basis.

In domestic practice, liability of nautical tourism port operators and the related liability insurance represent a very complicated legal matter that causes a high level of legal insecurity. In determining whether an event is compensable or covered under the nautical tourism port operator liability insurance agreement, one should first consider the nautical tourism port operator's civil liability. In order for an event to be compensable under the nautical tourism port operator liability insurance agreement, the nautical tourism port operator's liability for damage suffered by the injured party must first be established. In cases where liability of the nautical tourism port operator is not established, the insurer will not be held liable either. More precisely, in determining liability for damage, it must be established whether the port operator complies with all the prescribed requirements and standards, i.e. whether it operates in compliance with the rules of professional conduct. One of the main criteria used in this type of assessment are the valid legal regulations and the berth agreement signed between the nautical tourism port operator and its service users. Therefore, liability must be determined primarily in accordance with the provisions of the relevant berth agreement. Such agreements are based on party autonomy and are not legally regulated under special statutory provisions. The General Operating Terms and Conditions constitute an integral part of the Berth Agreement, which is why liability of the operator of a port of nautical tourism is also to be determined in accordance with the General Operating Terms and Conditions. It is however important to note that berth agreements and general operating terms and conditions must be considered and interpreted pursuant to the Civil Obligations Act (hereinafter referred to as: COA), and its provisions pertaining to the right to damage compensation and remedy in particular.

The question is which legal regulation is to be applied where liability of nautical tourism port operators and nautical tourism port operator liability insurance are concerned, i.e. are we to apply the provisions of the Civil Obligations Act or the Maritime Law Code considering the fact that the matter in question is associated with vessels and terms of insurance typical of marine insurance.

The author will consider the most disputable judicial aspects of nautical tourism port operator liability insurance in domestic judicial and business practice, including the standard which is to be applied for the purpose of determining due care requirements the nautical tourism port operator must comply with as a provider of vessel accommodation and receiving services as well as the related and complementary services; exclusions of damage caused by intent or gross negligence on the part of the port operator, its employees or subcontractors from liability insurance coverage, and proper interpretation of other common exclusions; material law applied in connection with nautical tourism port operator liability insurance and admissibility of direct claims against the insurer by the injured party, and similar. The author will apply the comparative analysis method to give an overview of the relevant standard insurance clauses applied in foreign insurance markets and will present her view of the desirable further development of the nautical tourism port operator liability insurance model applicable in our market, taking into consideration the new needs associated with modern nautical tourism development in Croatia.

Dr. Ann Fenech



Fenech & Fenech Advocates; Malta Maritime Law Association (Malta)

Ann Fenech is the Managing Partner of Fenech & Fenech Advocates — Malta. She qualified in 1986 and joined Holman Fenwick and Willan in London.

In 1991 she moved from there to Chaffe, McCall, Phillips Toler and Sarpy in New Orleans. In 1992 she joined Fenech & Fenech Advocates setting up the Marine Litigation Department. She was appointed Managing Partner in June 2008.

She has extensive experience in disputes ranging from ship building contracts to immediate casualty response in collisions having acted and advised some of the most important international maritime operators.

She has been responsible for the drafting of a number of laws related to the maritime sector including the Pilotage Regulations and the sections on Jurisdiction in Rem in the Code of Organisation and Civil Procedure. She lectures extensively on the subject in Malta and abroad; she is the President of the Malta Maritime Law Association. In October 2010 she was appointed an Executive Board Member of the European Maritime Law Organisation. In 2012, 2014 and 2015 she was awarded Best in Shipping Law at the European Women in Business Awards held in London. In October 2013 she was appointed Honorary Patron of the Malta Law Academy and in June 2014 was elected on the Executive Council of the Comité Maritime International. In October 2015 she was appointed on the Malta Maritime Forum Board of Directors and in April 2016 she was also appointed to represent the Malta Maritime Law Association on the board of the government agency Malta Marittima.

Ship Finance Security Practices

The Cape Town Convention, the popular name given to the Convention on International Interests in Mobile Equipment, is commonly associated with aircraft. The reality is that it is only one of its three existing protocols which deal with Aircraft Equipment, Rolling Stock and Space Assets. Originally there was the idea to extend the convention to shipping by formulating a protocol for ships however the idea was abandoned principally because it was felt by the shipping industry at the time that the centuries old shipping sector was in a class of its own and that the rules and regulations prevalent in most jurisdictions adequately protected mortgagees and financiers and that there was no need for there to be a centralised register to register securities in ships.

Since then the idea of having a shipping protocol to the Convention has again been raised, and the Comité Maritime International wishes to be prepared with the right information on what are the current ship finance security practices world wide in the event that it is necessary to consider again whether or not it would be of benefit to have a shipping protocol to the Cape Town Convention.

The presentation will develop this theme and will explain how the CMI has created an IWG on Ship Finance Security Practices and what has been done so far.



German Federal Supervisory Authority for Air Navigation Services (Germany)

Nikolaus Herrmann is the Director of the German Federal Supervisory Authority for Air Navigation Services (Bundesaufsichtsamt für Flugsicherung) and has been so since the foundation of the authority in 2009. For almost a decade, he had been lecturer and professor at the College for Public Administration in Meissen, Germany. His teaching experience extends to other academic institutions in Germany and the UK, in particular the University of East Anglia where he taught German Law and Language in 1988 — 1991. Work experience include posts at the Hessian Ministry of Transport in Wiesbaden, Germany, the Saxonian Ministry for Environment in Dresden, Germany, and at an international law firm. He has published in the fields of aviation, planning, environmental and European law.

The Single European Sky — Concepts, Assumptions and Legends

The Single European Sky (SES) initiative has started as a reaction to the heavy delays the European aviation has experienced in the 1990 years. The European Commission, based on the work of a High Level Group set up to examine the relevant issues, came to the conclusion that the main cause of this delay situation was the fragmentation of the European airspace.

With traffic forecasts indicating a steady increase of traffic leading to duplication by 2025, a sharp rise of delay figures was foreseen. To avoid a “capacity crunch”, a defragmented Single European Sky was to be created.

Four “high level goals” were established:

Enable a 3-fold increase in capacity which will also reduce delays, both on the ground and in the air;

Improve the safety performance by a factor of 10;

Enable a 10% reduction in the effects flights have on the environment and;

Provide ATM services to the airspace users at a cost of at least 50% less.

As it is well known, the traffic growth has not materialised. But as with all prognostic assumptions, future developments do not make the initial prognosis false or invalid. They may only call for adaptations.

However, some other assumptions require a critical review:

Airspace fragmentation

The fragmentation of the European ANS system is generally recognised as leading to inefficiencies, and in particular to costs deemed too high. But the map of Europe with all the FIRs that is usually presented in this context does not provide an adequate description of the problem. From an operational perspective, it is not the FIRs, i.e. the — usually national — areas of responsibility of the different ANS providers, that are relevant. Operations are conducted on the basis of sectors, each with different controllers and with different radio frequencies for voice communication. And there are more than 20 times more sectors than ANSPs.

So, fragmentation on the operational ATC level is much more a technical issue. The operational necessity of handing over of an aircraft from one sector to another several times during a flight should represent a seamless service for the airspace user. Uniform standards for procedures and equipment, i.e. their interoperability, are crucial for meeting this requirement. Future developments with a new information landscape — SWIM — and other operational concepts based on new technology (sectorless operations with 4D trajectories) have thus the potential to reduce the impact of fragmentation on the system performance without any institutional change.

Still, FIR boundaries and thus sectorisation along national borders are doubtlessly suboptimal for efficient operations. But functional airspace blocks (FABs) have not turned



out to be the solution of choice. Bilateral agreements for cross-border sectorisation remain a simpler alternative.

Civil-military cooperation

Fragmentation of the airspace has also another dimension, and not along the lines of national borders. Direct flight routes are often not possible due to the airspace structure within the EU member states themselves, in particular due to airspace reserved for military activities. The concept of Flexible Use of Airspace that aims at balancing civil and military airspace requirement, but its application throughout the European Union gives a mixed picture.

Delays and airspace capacity

Airspace capacity is usually expressed by delay times. The indicator used to express performance in the area of capacity is the average delay per flight. Economically, very low targets for average delay most likely incentivise misallocations, as marginal costs increase exponentially while marginal utility is tending to decrease. Operationally, from a gate-to-gate perspective, average ATFM delay below a certain threshold loses significance when aircraft operations contain buffers of at least several minutes. And for 4D operations, minimising delay is crucial, but it is exact timing that matters, not averages.

Cost reduction

The main reason given for the goal of ANS cost reduction is the assumption that ANSPs charge monopoly prices that are, by definition, too high. There can be no doubt that air traffic control services have, within in defined airspace, a monopoly position, based in the current technical and operational environment on safety reasons. But ANS has, so far, never been a "business" that has been free to set monopoly prices, but rather a public service with limitations to entrepreneurial decisions even if set up as a private law corporation. This cast some doubt on the application of the usual set of instruments for monopoly control.

Frank Jost

Policy Officer, Single European Rail Area, Mobility and Transport, European Commission (European Union)

European Commission, DG MOVE, Single European Railway (Since January 2011)

- Infringement procedures on market access legislation.
- Managing the full life cycles of studies from planning to implementation and dissemination of results on gauges
- Consulting on, evaluation and impact assessments, negotiating with sector representatives and Member States on Implementing Regulations on (1) infrastructure charges, PPP (2) licensing of railway undertakings, including the accident cover and the publication of data
- Commission Decision on infrastructure capacity allocation.

European Commission, DG MOVE, Rail Transport (February 2004 — December 2010)

- Policy officer for economic aspects of the rail sector including service providers, industry and user communities, in particular
- European Semester
- Economics of infrastructure usage costs and charges,
- Licensing of railway undertakings, including their financial fitness, accident insurance to cover liability of railway undertakings
- Presenting policies at expert workshops and at the UNECE in Geneva
- EU accession negotiations with Croatia on the rail acquis.
- Pre-accession talks with West Balkans in railway policy.
- Chairman of a working group with officials in the West Balkans, which reports to annual ministerial meeting.

European Commission, Directorate General for Energy and Transport, Unit Road Safety and Technologies (1 July 2001 — 31. January 2004)

- Administrator for research and safety of road infrastructure.

European Commission, Directorate General for Transport, Unit Research and Intermodality (16 May 1996 — 30 June 2001)

- Research officer for road transport.

German Federal Ministry of Research and Education, Bonn, Germany (1 January 1993 — 15 May 1996)

- Research officer for land transport technologies



- Development of federal research programme, negotiation of contracts, contract follow-up, dissemination of results.

VAW aluminium AG, Bonn, Germany (16 April 1987 — 1 January 1993)

- Industry holding
- Project manager
- Redesigning business processes in medium sized manufacturing industry, system development and implementation of software solutions for management of materials.

Education and Training

- University of Technology, Darmstadt (DE) (October 1981 — April 1988)
- Business administration, mechanical engineering, with theses on logistics, finance and accounting
- Diplom Wirtschaftsingenieur technische Fachrichtung Maschinenbau
- Diplom (University)
- German (1st language), English (excellent), French (very good), Italian (basic), Dutch (basic)

Transparency on Access Conditions and Charges of Stations and Terminals

In the third quarter of 2017, the Commission, after 18 months of intense sector consultation, issues rules for fair and predictable capacity allocation for track, stations and facilities.

Infrastructure managers will make a joint effort to consult railway undertakings at an early stage about upcoming works that impact significantly the operations of trains. Moreover, infrastructure managers will provide different alternatives, including the implications on the prices, and details on schedules for the duration of the works. Pursuant to a commitment taken by the infrastructure managers under the umbrella of RailNetEurope in Vienna, the Commission now integrates the key elements of that commitment into a legal instrument, giving railway undertakings the legal lever demand compliant implementation.

A second set of rules on “rail service facilities”, specifies what access conditions and procedures the operators of rail terminals and stations have to publish and which procedures they have to apply when allocating capacity in those facilities. The new rules should allow to make the best use of available capacities and put an end to long standing problems of denied access and unfair pricing in a market with dominant operators all over the place.

Dr. sc. Mirta Kapural



Croatian Competition Agency — AZTN (Croatia)

Ms Mirta Kapural, PhD — present position: Department for International Cooperation, Croatian Competition Agency. Main tasks include: coordinating international cooperation of the Competition Agency, especially in relations with European Commission and EU competition authorities within ECN and with ICN working groups, ICC Competition Commission, OECD.

2016 — 2017: Chair of the working group for the preparation of the Law on damages claims for the breach of national and EU competition law (transposition of EU Directive 2014/104)

2014 — 2016: Guest lecturer of Competition law at Faculty of Economy and Forensic Studies in Split

2013 — 2017: Author of the seminar and regular lecturer on EU and national Competition law in the Public School for Civil Servants

2013 — Chair of the Competition Network for European Energy Community

2012 — PhD in Competition Law and Company Law, University of Zagreb, Faculty of Law, PhD Thesis: "Application of Leniency Institute for Immunity of Fines or Reduction of Fines in Competition Law"

2011 — 2010: guest lecturer of Company Law and Contract law at the Faculty of Economy in Zagreb

Since 2009 — lecturer of EU and national Competition law in the Ministry of Foreign and European Affairs of the Republic of Croatia for Croatian civil servants and at national and international seminars and conferences.

2007 — Traineeship in the European Commission, DG Competition.

2006 — 2009: Member of the Working Groups for Negotiations with the EU, chapters "Energy", "Competition" and "Free movement of Workers".

Since 2004 employed in Croatian Competition Agency,

worked as a case handler and Head of Section—market for services, deputy Head of International Cooperation Department.

August 2001 — October 2001: Governmental Representative in the UN Office for Human Rights in Geneva.

2001 — 2004: Legal adviser in the Governmental Office for Human Rights with special emphasis on the international cooperation with United Nations and EU institutions.

2000 — 2001: Trainee in the European Commission, DG Environment.

1999 — 2001: Legal adviser in the Ministry of European integration of the Republic of Croatia.

1999 — completed Masters in „Contemporary European Studies" at the University of Sussex, Sussex European Institute, Brighton, United Kingdom.

1998 — graduated from the Faculty of Law in Zagreb and awarded with Chancellor's award and with the Scholarship from Croatian Government for post-graduate studies in the U.K.

Author of several articles in EU Competition Law (Joint ventures, Cartels, Leniency, Private Enforcement and damages claims, Abuse of a dominant position, Interim Measures, Commitments, ECN, Harmonization of Croatian Competition law with EU competition law).

Foreign languages: English, German, Spanish, French, Portuguese.

Professional interests: Competition law, Company law, EU law and International relations.



RYANAIR/AER LINGUS Case: A Merger Trying to Become a Reality and the Issue of Minority Shareholdings

Ryanair/Aer Lingus merger case represents a unique EU case of the same merger prohibited twice. Despite of all efforts of Ryanair to acquire its main competitor Aer Lingus on flights to Ireland by offering different remedies, the European Commission firmly stood on the ground that this merger should not be allowed. Ryanair notified planned concentration to the European Commission in 2006, 2009 and again in 2012, but Ryanair withdrew its notification from 2009. In other two cases, in 2007 and in 2013, the European Commission declared concentration incompatible with competition rules. This paper will firstly give short overview of the merger control in the EU and application of the Council Regulation 139/2004 (EU Merger Regulation). Then it will try to explain the reasons behind prohibition decisions of the European Commission in the Ryanair/Aer Lingus case. This was the first time that the European Commission has dealt with a proposed merger of two airlines with significant operations based at the same airport. Mainly, this merger if allowed would have led to the monopoly of two largest competitors in Ireland with around 80 % of all intra-European traffic at Dublin airport on more than 35 routes. Consequently, this would lead to reduced choice for consumers with lower quality and higher fares. In other words, if the merger had been allowed, there would have been none or very few new airlines willing and able to enter the market and to compete with joint Ryanair and Aer Lingus in their home market. The merger could have significant competition concerns since it would have eliminated the strongest competitor of Ryanair. The remedies proposed by Ryanair including divestiture of business overlapping between two airlines, lease of certain number of slots from Ryanair, were deemed as insufficient to remove competition problems.

There are several important elements in this case but one key point which should be emphasised is the issue of minority shareholding rights in merger cases. Both economic theory and case law suggest that non-controlling minority shareholding may also sometimes cause harm to competition. At the moment, on the European level only competition authorities in some EU Member States (Germany, United Kingdom) can take into account such competition concerns caused by minority shareholding mergers. However, the current legal basis does not give that possibility to the European Commission to address competition concerns raised only by the acquisition of minority shareholding. This is clearly shown in the present case Ryanair and Aer Lingus, the acquisition in question included public bid which precludes the implementation of the Article 101 of the Treaty on the functioning of the EU (TFEU) on prohibited agreements. Similarly, Article 102 of the TFEU regulating abuse of a dominant position could not have been applied either because Ryanair as an acquirer was not in the dominant position. The Merger Regulation 139/2004 gives the framework for testing the minority shareholdings but only for the assessment of mergers involving the undertaking which previously acquired minor shares in other undertaking. However, the Merger Regulation 139/2004

does not envisage cases of minority shareholdings which are acquired and not related to the acquisition of control within the meaning of mergers between undertakings. Hence, in order to be able to address this issue European Commission is trying to find the solution and the instruments to control minority shareholding mergers. The problem of acquisition of minority shareholdings identified in this case is reflected in the current reform of the Merger Regulation 139/2004 and the proposal of the European Commission to introduce "targeted transparency system" which aims to target potentially anti-competitive minority shareholding if it creates competitively significant link. Hence, the central part of this paper will be dedicated to the analysis of non-controlling minority shareholdings, the reasons why it is important to establish the criteria for their review and what are the negative consequences that minority shareholdings can have. Particular attention will be given to the cumulative criteria proposed by the European Commission to establish competitively significant link including: the target of the investment is a competitor or a vertically related company; and where the shareholding acquired is around 20% or above 5% and accompanied by additional elements such as de facto blocking minority rights, a board representation, or access to commercially sensitive information of the target company.

The analysis will aim to discover if proposed criteria is suitable, how it can be improved and the last part of the paper will try to examine if some other criteria would be better placed for the minority shareholdings acquisitions on the EU level.

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Vivian van der Kuil is a lawyer in the Law office AKD Benelux Lawyers. Vivian specialises in emergency response in the shipping and energy sectors, including salvage, total loss, collision, fire and explosion, limitation of liability, wreck removal, piracy, the arrest of ships and both civil and criminal pollution liabilities with respect to seagoing vessels, inland waterway vessels including yachts. She acts for charters, traders, shipowners, H&M underwriters and P&I clubs on charter party, bill of lading, offshore and general shipping issues. Vivian also deals with insurance coverage and other shipping and energy-related commercial and contractual disputes.

Vivian is a litigation specialist bringing her experience in the Dutch Civil and Criminal Court as a former judge and public prosecutor to bear in complex proceedings, reaching efficient and creative solutions. Before joining the legal profession, Vivian completed officer training at the Royal Dutch Institute for the Navy and subsequently worked as an officer of the Operations/Navigation Service with the Royal Dutch Navy.

EU Trans-Border-Arrest: The Brussels I bis Regulation

A lot of things can happen during shipment of goods; the vessel carrying the goods can collide with another vessel and the vessel can subsequently be ship wrecked. Cargo can fall over board, stowage and/or lashing can prove to be insufficient and vessels can suffer a so-called 'black-out' which can cause decay of perishable goods due to failure of reefers. Furthermore freight, management/agency fees and/or bunkers may remain unpaid. In order to be able to enforce such claims there are two important issues to consider. First of all, it is important to try to arrange for security for these possible claims and in respect of damage to gather evidence in respect of its cause and extent. The first step is, of course, always to try to arrange for this amicably, but failing such cooperation enforcement measures may be necessary. What the possibilities are for this differs from jurisdiction to jurisdiction. The Dutch jurisdiction offers a wide variety of possibilities and the specialized maritime chamber of the Rotterdam court is easily accessible and well experienced with all kinds of transport and shipping related issues. Furthermore they are available on a 24/7 basis which in transport cases can really make the difference.

Previously these measures were only available if the vessel was still located in the Netherlands and the measure effected in the Netherlands. However the revised Brussels I Regulation (1215/2012) has introduced an important change making it possible to enforce provisional measures throughout the European Union on the basis of a simple application by a party in one of the member states. This means that certain (interim) measures available under Dutch law now can also be exported to and enforced in other EU countries. So even if a vessel is not situated in the Netherlands there may be possibilities to use the broad spectrum of interim measures Dutch law offers for the benefit of the claimant in order to establish the damage and/or enforce payment of the claim.

Which interim measures there are available under Dutch law will be explained below before explaining how the Brussels I Regulation makes it possible to enforce these throughout the EU.

Interim/provisional measures

Under Dutch Procedural Law it is possible to obtain an attachment order against the debtor's assets (for instance a vessel or bank accounts) before having obtained a final judgment or award on the merits against the defendant. Such conservatory attachment to obtain security for your claim can be made before a procedure on the merits has actually even been started, whether in the Netherlands or in another jurisdiction. Furthermore, it is not necessary that the claim itself be subject to Dutch law and jurisdiction. The procedure will be discussed in more detail below.

The same conservatory attachment can be used when there is a fear of evidence being lost or hampered with. It is then possible to request leave for a so-called conservatory attachment of documents and other evidence (for instance on electronic devices) to ensure that no evidence is lost. Traditionally this was only an option in cases regarding intellectual property but a couple of years ago the Supreme Court in



the Netherlands has determined that the option is also available in other cases. However there are certain restrictions; the most important being that a bailiff may only attach the documents indicated in the leave granted by the court and Separate disclosure proceedings (Article 843a of the Code of Civil Procedure) are necessary for the documents to be provided to the party requesting the attachment.

There is also a possibility to file a petition requesting:

- a preliminary hearing of witnesses;
- a preliminary survey by a court-appointed surveyor; or
- a preliminary inspection of the place where the damage might have occurred (Article 202 of the Code of Civil Procedure).

Such a hearing, survey or inspection takes place before the proceedings on the merits have begun, in order to establish the facts of the matter and assess whether there actually is a claim. However, the court may allow for such a preliminary hearing of witnesses, preliminary survey or inspection only if it is established that it has jurisdiction to hear the claim on the merits (Article 203 of the Code of Civil Procedure).

In addition article 8:494 or 8:495 of the Civil Code give the carrier — as well as the party entitled to delivery of the cargo — the opportunity to request the court to order a preliminary investigation into the cause and extent of any suspected damage to cargo before, on or immediately after its delivery. These provisions offer wider possibilities for the way in which a survey is conducted and for the court-appointed surveyor. Furthermore, they do not require the court to establish jurisdiction on the merits before deciding on a request for such an inspection to take place. Article 633 of the Code of Civil Procedure determines that the court at the place where the cargo is located when the request is made has jurisdiction to order the investigation, as provided for in articles 8:494 and 8:495 of the Civil Code.

The court appointed surveyor has to be granted access on board the vessel and his request to be provided with documentation, electronic evidence and other evidence must be obeyed as he is authorized by the Court to answer the questions to be formulated in the petition and to do everything that is necessary in order to arrive at well documented and motivated answers.

A court survey can be arranged for at short notice before arrival of the vessel to Rotterdam, for instance. This kind of court survey is an effective remedy for the problem that parties other than the owner usually do not have access to the vessel and the evidence on board, making it very hard to prove the cause of the damage or to rebut the arguments raised by the owner of the vessel.

If the court survey has taken place in the presence of or after proper notice to the debtor in the way as ordered by the Court, the report issued is presumed to be accurate. Although Dutch law of evidence allows the debtor to prove contrary to the findings of the court appointed surveyor, it goes without saying that the party whose claims are supported by the report does have an advantage over the other parties.

(Conservatory) attachment of assets

The Netherlands and especially Rotterdam are sometimes called an “arrest paradise” because of the fact that it is quite easy to get permission from the Court for an attachment of assets of a (potential) debtor. While in other countries the 1952 Arrest Convention broadened the possibilities for a ship arrest, in the Netherlands the possibilities are somewhat limited by this convention. Whereas the Dutch Code of Civil Procedure allows for an attachment of almost every assets for almost any claim including future claims, under the 1952 Arrest Convention a ship arrest is only possible for a so called maritime claim. What constitutes a maritime claim is defined in art. (1) (a) to (p) of the 1952 Arrest Convention. For instance a cargo claim falls fully within the category of art. (1) (a) “damage caused by any ship either in collision or otherwise”.

The 1952 Arrest Convention applies when dealing with an attachment of a vessel that sails under the flag of a signatory state to the convention.

A vessel can be attached in the Netherlands after an arrest petition is filed with the Court and the Court has granted leave for the attachment. In Rotterdam it is possible to address the Court even outside office hours, at night or during weekends. If necessary it is possible to pay a judge a home visit to file the petition and obtain leave. Although it's quite easy to obtain leave certain points must be covered in the arrest petition. First of all the applicant for the arrest must identify what the basis for his claim is. For instance when the claim arises out of a contract of carriage a copy of the contract and/or of the bill of lading conditions must be submitted to the Court together with the application. If the claim is based on unpaid invoices then any claim/demand notes that were sent must be submitted to the Court. And finally the defences by the debtor against the claim known by the applicant must be explained to the Court.

Depending on the kind of arrest certain other requirements must be met. For instance the Court sometimes wants to know why the applicant wants to arrest these specific assets. Starting point for the Court usually is that the arrest is made in the least burdensome manner, unless the applicant makes clear why these specific assets need to be arrested. When dealing with a ship arrest this usually does not constitute a problem.

The arrest application is a so called “ex parte application” and consequently the debtor is not heard by the Court on such an application. The applicant for arrest generally has, to a certain extent, the benefit of the doubt when seeking the leave for the arrest. If the applicant has an arguable case, both with regard to liability and with regard to the quantum of the claim, then the Court is likely to grant leave for the intended arrest. The Court will base itself on the information contained in the application for arrest and, at this stage, normally applies only a marginal test whether the claim as stated could arguably qualify as a ground for the attachment of assets.

The arrest petition must mention all proceedings that are pending in either the Netherlands or abroad, that may be relevant for the assessment of the arrest application by the judge. If proceedings are already pending, either in the Netherlands or abroad, then this merely needs to be mentioned. If



proceedings are not yet pending Dutch law prescribes that the Court determines a date before which such proceedings must be started. As a general rule 14 days will be granted by the Court from the date of the first arrest. When a longer period is required this must be specifically requested and this request must be substantiated. Usually courts allow a party a longer period when foreign parties are involved. It is possible to ask the Court for an extension of this period and such a request is often granted.

It is important to note that if you intend to make an arrest in the Netherlands you also must be prepared to start legal proceedings against your debtor. If you do not comply with the terms set by the court to start proceedings on the merits the arrest will become null and void and liabilities may ensue from this.

It is possible to increase the principal claim amount with a supplement for interest and costs. The principal amount that is increased with the usual supplement makes the total amount for which the leave for arrest can be requested. Only under extraordinary circumstances does the Court demand (counter) security from the party requesting leave for the attachment.

Create jurisdiction on the merits by arresting assets/ art. 767 DCCP

Once an attachment is made proceedings on the merits have to be initiated within the period set by the Court. When subsequently a judgment or award in the substantive action against the ship owner is obtained, it can usually be enforced in the Netherlands and the debt can be recovered under the guarantee or for instance from the proceeds of the auction of the vessel. If there is no other way to obtain a title which can be enforced in the Netherlands article 767 of the Code of Civil Procedure allows to initiate proceedings before the Court which has granted the leave to arrest the vessel.

The question of course is when a judgment or award of a foreign Court or Tribunal which has jurisdiction on the substantive action is not enforceable in the Netherlands. This could be the case when for instance there is no convention in force between the country where the Court or Tribunal is seated and the Netherlands which convention would allow the enforcement of judgments or award in civil or commercial matters. A Dutch judge will, in the absence of such convention, only allow for enforcement of such foreign judgment or award when certain requirements have been met. For instance the Court or Tribunal has to be a generally approved foreign Court and the Dutch judge will check whether there was a fair trial and whether the principles of due process have not been violated.

So if the owners are based in for instance the Marshall Islands or Liberia or Panama and no "approved" forum has been agreed upon, a Dutch Court would accept jurisdiction based on Article 767 of the Code of Civil Procedure.

The Brussels I Regulation (1215/2012)

The Brussels I Regulation imposes uniform rules throughout the European Union regarding international jurisdiction and the recognition and enforcement of civil and commercial judgments. The revised Brussels I Regulation (1215/2012)

introduces an important change whereby it is possible to enforce provisional measures throughout the European Union on the basis of a simple application by a party in a member state. As a result it is now also possible to apply a Dutch attachment order within the European Union, provided that the Dutch Court has jurisdiction over the merits of the case — for example when the parties involved have agreed on a jurisdiction clause appointing a judge court.

Previously *ex parte* provisional measures fell outside the scope of chapter III of the Brussels I Regulation on recognition and enforcement.

Article 35 of the Brussels I Regulation determines that an application for a provisional measure which may be available under the law of a member state may also be made to a court of that member state even if the courts of another member state have jurisdiction as to the substance of the matter. This means that, if it is determined that a certain measure qualifies as a provisional measure, the court may decide on the matter without jurisdiction as to the merits of the claim.

A preliminary survey, as discussed here above, may under certain circumstances, qualify as a provisional measure within the meaning of Article 35 of the EU Brussels I Regulation if it is established that the measure aims to prevent evidence from being lost.

Article 2(a) determines that: "for the purpose of Chapter III, judgment includes provisional, including protective measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defending being summoned to appear, unless the judgment containing the measure as served on the defendant prior to enforcement;"

This makes it possible to apply for leave for an attachment in the Netherlands if a Dutch court has jurisdiction over the merits of that case and request the court to extend the leave to other EU-countries if certain criteria are met. Recent case law has proven that this indeed is possible and the theory is already successfully being put in practice. This means that even if the attachment is not made within the Dutch jurisdiction it is possible to benefit from the straightforward procedure for an attachment that procedural law offers without the restrictions other countries/courts apply when requesting leave for an attachment. For instance in respect of counter security, amounts to be paid to the court and/or hearing of the other parties involved. Recent cases have proven that the Dutch courts are willing to grant leave for arrest in multiple EU-countries, the only hurdle to be taken is that the Dutch courts have jurisdiction over the merits. This is however something that can be easily fixed. For parties who expect to be experiencing problems with enforcing claims in the future it may be worth considering to include such a clause in contracts to be concluded in order to make it possible to apply for an order that can be executed throughout the EU and benefit from the possibilities Dutch law offers.



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Dr. Simone Lamont–Black (née Schnitzer) qualified as civil lawyer in Germany where she practised law as Rechtsanwältin for several years and obtained her Doctorate in law from Augsburg University with summa cum laude before moving to England. There she worked for many years as lecturer at Northumbria University in Newcastle before joining Edinburgh Law School in 2010.

She specialises in the law of international trade and carriage of goods and has a keen interest in international commercial dispute resolution, being also a CEDR Accredited Mediator, a Member of the Association of Arbitral Women, having acted as arbitrator inter alia at the Willem C. Vis International Commercial Arbitration Moot Competition and having founded the Edinburgh Vis Pre–Moot.

Simone researches and publishes mainly in the areas of international carriage of goods and transport law. She has also authored and co-authored several books, inter alia with Paul Bugden the second and third editions of Bugden & Lamont–Black, *Goods in Transit*, published with Sweet & Maxwell as part of their British Shipping Laws Series.

Scots Courts on Budget Airline Practices: Jurisdiction, Care and Compensation

This conference paper discusses case-law of the Scottish courts on specific budget airline practices and respective arguments on jurisdiction.

The paper is set against the facts of *Caldwell v EasyJet*[1], a key Scots case under both the Montreal Convention for International Carriage by Air 1999[2] and also the EC Regulation on compensation and assistance for denied boarding or cancellation of flights (EC Denied Boarding, Compensation and Assistance Regulation), EC Regulation 261/2004[3]. Here the Scottish courts had to decide on a number of significant issues:

Which courts had jurisdiction, where a number of “separate” flights were sold in order to enable the traveller to reach their destination. Could the airline treat every flight as a separate contract with separate jurisdictional consequences?

What was the interaction between the Montreal Convention and the EC Passenger Rights Regulation?

A further issue was the validity and reach of standard terms and conditions obliging the passenger to present themselves on time at the departure gate even in situation where, where there was little or no assistance available to passengers at the airport to timely allow them to check-in or drop their baggage and clear security, customs and passport control to reach the gate in time. Did the passengers have a claim for damages for breach of contract? Or alternatively, could this lack of assistance be classed as denied boarding under the EC Regulation, thus giving rights for compensation and reimbursement?

After setting out the facts the paper will explain the legal background and the reasoning of the court and suggest the likely approaches of the Scots courts on matters which, this time, had not stood for decision.

[1] 2015 S.L.T. (Sh Ct) 223; 2015 G.W.D. 34–546

[2] Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, 2242 U.N.T.S. 350 (hereinafter Montreal Convention).

[3] 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 delay of flights, and repealing Regulation (EEC) No 295/91 (OJ L46, 17.2.2004, p 1) (hereafter EC Passenger Rights Regulation).

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Dr. Maria Lekakou is Professor in Maritime Economics in Department of Shipping, Trade and Transport, and Member of the Council of the University of the Aegean. She has a longstanding experience in shipping and maritime policy, as Advisor to the Minister of Mercantile Marine (1996 — 2000), member of the National Regulatory Authority for Internal Maritime Transportation (2001 — 2004) and as a maritime expert in many national or European bodies (2007 —).

Maria Lekakou is co-author of books examining European Maritime Policy, Greek shipping competitiveness island transports and cruise tourism and she has studied short-sea shipping policy developments, maritime tourism, cruise industry, passenger shipping, labour affairs as well as European policies related to liner shipping, cabotage, maritime competition and regional development. In 2006. *European Policies for Shipping*, in 2007 *Maritime Transport: The Greek Paradigm*, *Research in Transport Economics* and „*Transports. Lifelines for the Islands*”(in Greek), in (2008). *Greek Shipping, Employment, Competitiveness*, in 2010 „*A critical assessment of the European Commission's Green Paper on Maritime Policy*”.

She has contributed over 60 peer reviewed papers to international scientific conferences or journals, and has participated in numerous R&D projects.

Selected Publications:

Lekakou, M. B., & Remoundos, G. (2015). Restructuring coastal shipping: a participatory experiment. *WMU Journal of Maritime Affairs*, 14(1), 109–122

Stefanidaki, E., & Lekakou, M. (2014). Cruise carrying capacity: A conceptual approach. *Research. Transportation Business & Management*, 13, 43–52.

Lekakou, M., B., Vitsounis, T., K., (2011) Market Concentration in Coastal Shipping and Limitations to Islands accessibility. *Research in Transportation Business & Management*, Vol. 2, 74–82

Lagoudis, I., N., Lekakou, M., B., Thanopoulou, H., A., Pantelarios, I. M., (2011) „Evaluating ferry services through an AHP estimated KPI system: A focus on Central Aegean” *International Journal of Decision Sciences, Risk and Management*, Volume 3, No 1–2, 153–178

Lekakou M.B., Pallis A.A. and Vaggelas, G.K. (2009). Which Homeport in Europe: The Cruise industry's selection criteria, *Tourismos*, 4 (4), 215–240

Liberalisation of Maritime Markets: The Greek Case

Traditionally the exclusive right of the national ship-owners to provide coastal services has reigned legislation on coastal shipping. Following a 'liberalization wave', the EU agreed in the early 1990s to the removal of restrictions in the provision of cabotage services (EU Regulation 3577/92). The new European regime put priorities to the provision of regular, affordable sea transport all year round to all inhabited islands and the prevention of destructive competition and predatory pricing. Interestingly, the abolishment of cabotage in the EU creates the need to adjust via fleet renewal and modernisation, even though it has increased pressures for the Greek flag. These adjustment pressures are directed towards both product innovation, which is the improvement of the provided services, and a process innovation, implicating entrepreneurship and reorganisation of the ways coastal services are provided.

In the last twenty years, significant changes have been observed in the domestic maritime sector. In the context of market liberalization, the European Commission voted EC Regulation 3577/92, for the abolishment of cabotage restrictions among member states.. The question raised is to what extent has the reform of legislative regime impacted the performance of the domestic maritime sector.

The purpose of this presentation is to evaluate the impact of the liberalization of the maritime cabotage on Greek coastal services and cruise services. The presentation is structured as follows: In Section 2 there is an introduction to the objectives of maritime policy and the cabotage regime. Section 3 provides a short historical evolution of the Greek sector and the reform process of the legislative framework. Section 4 presents findings of the relevant research. The last section summarizes the major conclusions.

In the context of national industrial policies, the authorities develop sectoral policies and strategies for the achievement of specialized goals (Suarez, Rodriguez & Corral, 2009). Different maritime policies are applied according to national laws based on the aims and objectives of each state as well on the historical evolution of the sector.

The major elements of a maritime policy are protectionism, employment, international maritime affairs, and competition policy.

The two general methods, subsidies or discrimination, will often be found operating together, or a country may be able to choose between alternative methods to secure a given aim (Sturmey, 1975). State's intervention is rationalized in order to avoid the potential negative effects of unregulated competition, such as quality, continuity, reliability, safety etc (Kahn, 1991). Intervention from the state is imposed if the state wishes to ensure the necessary services and the users, to safeguard employment and to control the risks generated from transport services.

Protectionism in coastal shipping is not a new phenomenon. Cabotage laws are the foundation for ensuring control over national transportation infrastructure. On the opposite side there is liberalization. Liberalization is achieved through de-



regulation with the removal of imposed barriers, especially in entry conditions.

Currently, most policies are moving from providing a closed protectionist environment towards more liberal regimes. More countries re-evaluated their national policy due to the unavoidable changes of the international environment and trade (Brooks 2009).

The policy within the European Union (EU) is a very characteristic example. The EU implemented EC Regulation 3577/92 to create a common market and to establish the conditions of fair competition among the member states and the market players. It should be noted that even before this regulation; many EU countries had repealed their cabotage regime or had applied more liberal frameworks. One year before the enactment of the 1986 Legislative Package on maritime policy, cabotage restrictions were in force in France, Germany, Greece, Italy, Portugal, and Spain. Denmark maintained cabotage restrictions for the trade with the Faroes. At that time, in all of the above Member States, except for Germany, cabotage involved mostly services to islands. Because coastal trade provides vital services of goods and passenger carriage to various parts of their countries, it has national security implications, thus the Member States defended the maintenance of cabotage restrictions on strategic grounds.

The Greek coastal passenger market is among the biggest in Europe. With 70 million passengers passing through its ports, Italy was the major seaborne passenger country in Europe in 2015, followed by Greece with close to 66 million passengers. The network of Greek coastal passenger services is a complex one, consisting of a large number of mainland-to-island, island-to-island and mainland-to-mainland connections. The Aegean coastal passenger shipping network is the densest one and constitutes over two-thirds of daily departures from the port of Piraeus, excluding short ferry links.

The market structure that has evolved is slightly different than the past: The limited number often of just two operators in the main itineraries, in the Aegean market point to an oligopolistic structure. The major Ferry Shipping Companies are now four (managing 45 ships) and 20 smaller companies managed to survive in the market and increase their fleet (47 ships).

Regarding the fares, they are imposed and announced by the coastal companies. However, the state intervenes in cases where public interest is "threatened" i.e. in cases of low commerciality where brake even fares would make the transport of certain population groups unaffordable. Such lines are characterized as thin lines and the state subsidizes the operator given that he will employ a ship of certain characteristics serving the route all year round (10 months minimum).

However, the main changes in Greek coastal shipping today refer, in essence, only to the regulatory framework. While there have been some changes on the supply side, demand traits remain more or less unaltered. When the institutional barriers to entry were being removed, the protests of Greek coastal ship users about the level of services provided specifically in the Aegean routes excluding those to Crete made the headlines. On the supply side, services are still provided by the same — more or less maritime — companies, pointing

eventually to limited firm rivalry in the market. However, in essence only the one year provision stabilizes the market and although this could be expected to create certain monopolistic practices along viable routes, in practice, the market is so unstable and violent that there no single dominant monopoly has arisen. However the larger shipping firms do seem to operate along the lines of a classic oligopoly due to the capital outlay required.

The truth of the matter is that for Greece, the move towards a liberalized environment coincided with a downturn in the market — less tourism, a major maritime accident, (Express Samina off the coast of Paros, Sep. 2001), the decline of the Athens Stock Exchange, the increase in oil prices, and the general "malaise" since the dot com crash. Perhaps liberalization came just in time to absorb the shocks.

A large number of the market's experts and players believe that the law needs to move farther to lift the remaining state-enforced entry barriers. In fact, because the liberalization has so far been half-hearted, since it is being put into practice by an administration that still thinks along the old modes of thought, many of the problems remain.

On the other hand, evaluating the cruise market liberalization Stakeholders' views support that, as performed, has not reached the expectations to enhance the strength and the development of the European (and Greek) cruise sector although that Europe (and especially Greece) had become an even more attractive cruise destination. Strong representations, mainly from the labour side, demand to re-establish restricted cabotage because they believe that nowadays the real beneficiaries are the foreign cruise lines who would be able to operate entirely in Greece at the expense of Greek jobs and Greek business.

As admitted by the participants the shrinkage of the Greek market was not a single parameter result, but a complex process that is attributed to the new regime, the adjustment problem from the side of the entrepreneurs and the intensification of competition. This fact successively affects the national registry and the number of Greek seafarers. The European Regulation has not the expected impacts in the case of Greece. This has not resulted from any malfunction of the Regulation, but from the failure in the implementation process from the side of Greek government. This is justified at a first glance on the basis of results of the cruise market development in other European Mediterranean countries, such as Spain and Italy.

Regarding, the recent cabotage reform (2010 and 2012) for the non-EU cruise flags, the majority of the respondents consider that the law is in the right direction but in a wrong framework.

Having only the view of the impact and not the actual data, we conclude that the "unconditional" liberalization, without estimating the potential impacts and monitoring the process, could lead to the exactly opposite direction. This is also the case for ferry market where the liberalization of the Greek coastal market seems to have led to a decline in the number of companies operating suggesting higher levels of concentration, higher fares and a lack of new entrants into the market.

Eric Louette



ITS Task Force, French Department of Transport/Ministry for an Ecological and Solidary Transition (France)

Mr Eric Louette, advisor on freight and logistics is a project co-ordinator on goods transportation and logistics at the Intelligent Transport Task Force within the French Department of Transport — Ministry for an Ecological and Solidary Transition.

One of the projects he is working on today is to develop systems for interoperable and multimodal telematics systems applied on freight and fleet management, but also on other fields of French and European issues: traceability; tracking&tracing satellite systems; enforcement; security and safety; embedded tools for trucks; digitized and standardised transport facilitations : e-documents and procedures. Moreover, he is involved in EU programs: e-Freight, tracking&tracing of vehicles and freight (CORE, AEOLIX), urban deliveries of goods, Digital Transport&Logistics Forum.

In the scope of international exchanges, he did currently a lot of presentations in the frame of annual international and European ITS world congresses from 2003 (Madrid) until to 2016 (Melbourne) and from Budapest (2004) until to Strasbourg (2016), participate in seminars for a digitized international supply chain (Quito, Tai'pei, Kuala-Lumpur, Hong-Kong, Kyoto, Shenzhen) and forums for the deployment of ICT in transport and logistics sectors (Lille, Batna — Algeria, Sousse — Tunisia, Ryad — Saudi Arabia, ...).

Previous relevant experience

EVI (Electronic Vehicle Identification) — ERTICO — tags to identify vehicles

GEOFENCE-MD (Great Lyon, Renault Trucks) for urban hazardous goods deliveries and TEMPO-ARTS (Advanced Road Traffic in South West) euro-régional programme for Tracking and tracing Dangerous Goods (DG) and living animals; MITRA (STREP of EC for the DG risk management), MADAMA (Risk MAnagement Systems for Dangerous Goods Transport in Mediterranean Area —

2006–2007), SCUTUM (GNSS tracking&tracing system in Italy, Austria and France — 2011), in cooperation with the Centre d'Etudes Techniques du Sud Ouest (CETE S-O); advisor in the Telematics workshop of UNECE Joint meeting for DG regulation and the UNCEFACT;

PREDIT WP04 (freight and logistics), Poles of competitiveness and clusters: expertises of proposals to improve multimodal, efficient and CO2 friendly transports;

Embedded systems in trucks: a ROI study for small and medium hauliers companies (2008);

ASEAL (Asia–Europe Alliance): paperless programme for the supply chain and facilitations of exchanges between all the public and private operators: moreover France–China corridor;

E-FREIGHT: European programme for paperless documents (waybill) and next generation single window;

CORE (Consistently Optimised REsilient Secure Global Supply–Chains) FP7 project (2014 — 2018);

DTLF (Digital Transport&Logistics Forum) EC/DG–MOVE programme 2015 — 2018;

At the same time, he participates in civil engineering schools (ECE Paris, ENTPE Lyon, CNAM, Ecole Centrale de Lille, ESC Clermont and Rouen) training programme and teaches TIC and economics for transportation at Paris 12 University, as he did in several universities and research bodies of Western and Central sub-Saharan Africa, from 1980 until to 1993;

Eric Louette has post graduate degree in International Law (Institut du Droit des Affaires — Aix-en-Provence), Management of Projects (Bordeaux 1) and Transport Economics (Lyon 2).

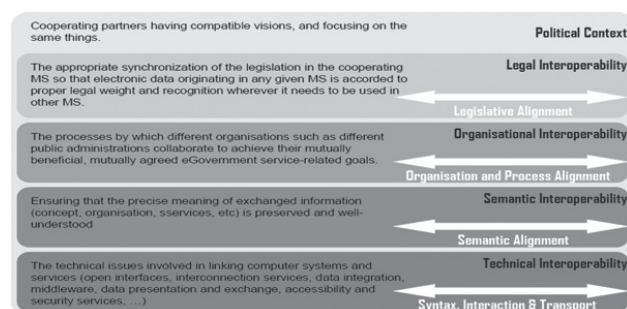
Digital Transport&Logistics Forum: A Program for Digital Transparency and Inter-Operability

I — An EC initiative

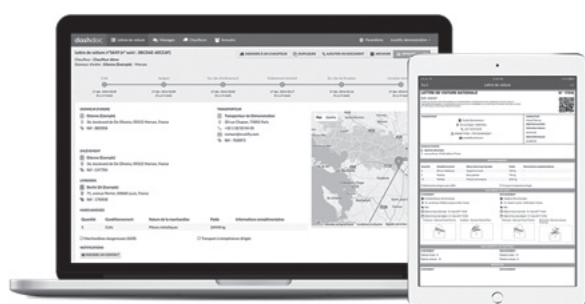
The Forum is a consultative body bringing together stakeholders in a multimodal environment to achieve a common perspective on digital transport and logistics in the general context of the Digital Single Market and to identify initiatives and concrete recommendations for relevant European policies and legislation. The Forum gathers stakeholders at European and international level and have a duration of three years. In addition to the Plenary, the Forum addresses in the form of working groups (WGs) specific topics, around currently four major challenges of digitalisation identified.

It is a platform for the coordination and cooperation between stakeholders (operators, logistics service providers, public authorities, cargo owners, technology provider) in a cross-modal and cross-sectorial perspective and provides expertise and user requirements for the further digitalisation of transport and logistics and the possible preparation/implementation of EU legislation.

1.1 : Interoperability of systems and standards (incl. governance structure) — to actively connect all players;



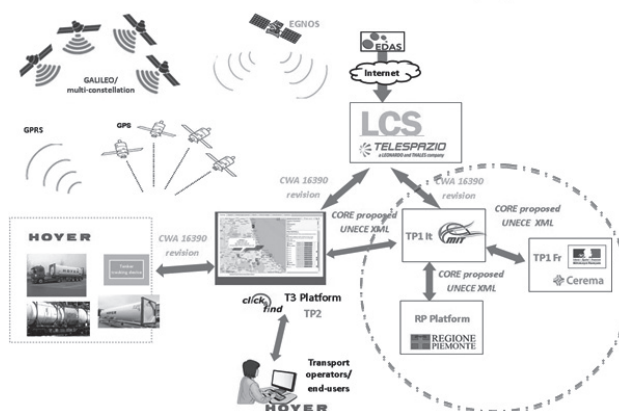
1.2 : Acceptance of electronic documents — by all public and private players in the market;



1.3 : Intelligent use of electronic data available to create added value for EU business — adjust planning based on real time data; allow private actors to use public data; manage, share, exploit data and new business models and value added services; develop corridor community systems/data platforms;

Key Partners	Key Activities	Value Propositions	Customer Relationships	Customer Segments
<ul style="list-style-type: none"> logistics service provider Platform provider Infrastructure provider Administration / Public Authority European Commission Shippers / Buyers Financial Service Providers (i.e. Banks) 	<p>data exchange for the Supply chain</p> <p>Key Resources</p> <p>Standard heavy goods vehicle</p> <p>Standard palletised goods</p> <p>Standard type of data format exchange</p> <p>Standard unified use of the commodity codes</p>	<p>Harmonised seamless and interoperable service across borders</p> <p>Limit congestion, pollution and GHG emissions</p> <p>Improve the infrastructure capacity utilization</p> <p>Improve end-end visibility in the supply chain / door to door cargo transport utilization</p> <p>Improve truck and container load factors</p> <p>Increase in public and private market collaboration</p>	<ul style="list-style-type: none"> PPP Service level agreements EC Directive <p>Channels</p> <p>To common destinations</p>	<p>Own factories or distributions centres</p>
<p>Cost Structure</p> <p>the data would be available for free by Public Authorities filtering, forwarding, storing, and processing the data would involve real costs).</p> <p>KPI's for safety, efficiency and service are met for all stakeholders</p>		<p>Revenue Streams</p> <p>Subscription service model</p> <p>Risk sharing schemes</p>		

1.4 : Trustworthy environment — cybersecurity, trusted third party and e-Signature.



Architecture for CORE (FP7 EC) WP16 Tracking&Tracing of dangerous goods transport

II — Main Items

2-1 eDocuments: progress is first needed to enable the use of electronic transport documents: in some countries, individual legislations at national level are a barrier to the use of electronic transport documents. France did access in November 2016 to the eCMR protocol. Furthermore, the re-use of information already submitted can enable efficiency gains and cost savings. For example in the case of maritime transport, thanks to an eManifest, a ship upon entering the EU would provide the required information once, the same information being then re-used from port to port as needed;

2-2 Big data / cloud platforms and new opportunities: A large quantity of data is generated in existing systems (big data, structured and unstructured). There is a high potential and an urgent need for exploiting those data more widely along the logistics chain, in combination with trust-building tools (data protection, cybersecurity, etc), adequate data governance, business models (e.g. when sharing data or assets), transparency and integrity control. This can enable the provision of detailed shipment information to end-consumers, improve processes in real-time or enhance the predictability of transport operations. All these are topics that should be addressed by the Forum;

2.3 Internet of things: By 2020, up to 50bn devices will be interconnected — not just phones — to a



high-speed internet. As an example, better use of digital technologies can enable a port authority to increase capacity without increasing space. Another example would be the real innovation that would be brought by cross-border tracking and tracing. While track and trace is an old tool at national level, it would indeed be innovative for businesses at cross-border level. Digital technologies are evolving fast. It is therefore important to think about who is in the “surprising neighbourhood” — which organisations from outside sector(s) may become competitors, as it may happen e.g. in the automotive sector;

2.4 Single Window: A big challenge in data sharing is found in business to government (B2G) and government to government (G2G) activities: Forum members considered that administrations within governments do not sufficiently share information and lack in delivering efficiently. Governments are called to encourage the use of single windows;

2.5 Pilot projects on TEN-T corridors: Pilot projects would be needed to show possible benefits of digital transport. TEN-T corridors could be an adequate frame where such pilots could be implemented and coordinated;

At last, social aspects are taken into consideration cause it needs to be acknowledged that digitalisation also has social effects. Some jobs might become redundant by adopting digital technologies, while others might be created thanks to the development of new value added services. Furthermore, investments in human capital will be needed to assure that the workforce has the necessary competences and skills.

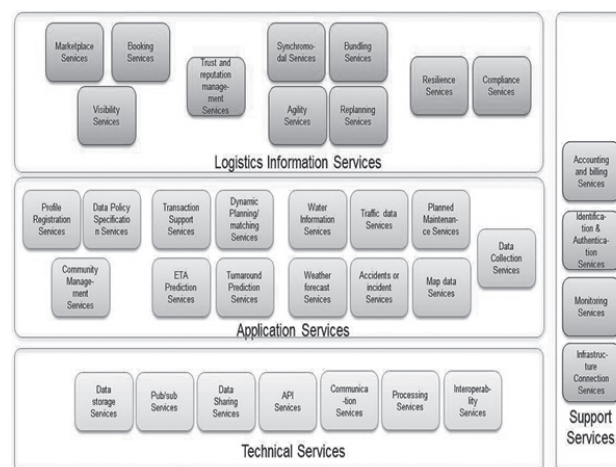
III — Conclusion

The as-is situation, where, on the one hand, there are standards leading to closed systems due to different implementation, and, on the other hand, platforms and infrastructure are mostly proprietary solutions which are difficult to compare and to expand.

The objective of an integrated systems approach is to support innovation in interoperability and create an open infrastructure for controlled data sharing amongst logistic service providers and with their customers, meeting authority requirements.

The integrated systems approach would build upon investments by re-using existing (open or de-facto) standards, re-using available platforms and their functionality and would be technology independent, allowing to incorporate specific solutions such as blockchain. It would meet business needs by allowing for standardized services which increase market potential of suppliers and prevent vendor lock-in.

A conceptual interoperability approach was introduced for flows of interaction between customers and providers (choreography for transactions) based on minimal data sets. Conceptual interoperability, based on business processes, would allow for controlled data sharing for business requirements between any two stakeholders.



Generic concept for a common platform:

References

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- [3] E. Louette, Presentations for the SIS at the ITS worldcongress 2016 Melbourne, the UN/CEFACT 29th Forum and the SITL (Paris, March 2017)
- [4] S. Eckartz, W. J. Hofman, and A. F. v. Veenstra], “A decision model for data sharing”, presented at the Electronic Government (EGOV), Dublin, 2014
- [5] B. Klievink, E. Van Stijn, D. Hesketh, H. Aldewereld, S. Overbeek, F. Heijmann, et al., “Enhancing Visibility in International Supply Chains: The Data Pipeline Concept”, *International Journal of Electronic Government Research*, vol. 8, 14–33, 2012



legal representative, ACI d.d. (Croatia)

Sanja was born in Rijeka in 1982 and graduated from the Faculty of Law, University of Rijeka in 2006. After graduating, for the next 7 years she was employed in a law office where she gained experience in working in all legal branches. In 2009 she passed the Croatian bar exam and the same year was appointed Permanent court interpreter for English language. Since 2013 she has worked as a legal representative in ACI d.d., with a special interest in issues that the company faces with regard to maritime domain and the concession system. Parallel to work in ACI d.d. she enrolled the Postgraduate Specialist Studies in Commercial Law and Company Law and then a Doctoral programme in legal sciences, at the Faculty of Law of the University of Zagreb, where she currently writes her Doctoral thesis on the subject „Property Rights Issues Regarding the (Not) Registration of Maritime Domain in the Land Register“.

Construction of Buildings and Other Infrastructure Objects in the Ports of Nautical Tourism

The construction of buildings and other infrastructure objects on the maritime domain, given its legal nature as a common good, can only be achieved through the concession regime. The Building Act, apart from the concession contract, does not foresee any other way of proving the legal interest for issuance of a building permit for real estate for which property rights cannot be acquired. Therefore, a potential investor proves the legal interest with a concession contract for the economic exploitation of a maritime domain or a concession contract for the special use of maritime domain. Concession is explicitly stipulated by law as a contractual right, and the very content of that institute, from the nautical tourism point of view, stands for the use of maritime domain, with or without using existing buildings and other structures and with or without constructing new buildings and other structures on the maritime domain. In the Physical Planning Act the term infrastructure includes municipal, transport, energy, water, maritime, communication, electronic communication and other buildings intended for managing other types of manufactured and natural goods.

Ports of nautical tourism, though in their essence exist in symbiosis with individual micro location, by a normative definition, in the constructional and functional view, represent a unified complex, which means that from the construction aspect they have to be seen as a unique structure. The question of the construction of buildings and other objects within the concession scope of a nautical tourism port usually comes up in the case of the construction of a new port or in the event of a complete reconstruction of the port as a necessity through the duration of the concession, due to the deterioration of superstructure and infrastructure or the need to increase existing capacity. Cost-effectiveness of such an investment, must be given in a feasibility study, whose content depends on the scope of the project. Regardless of whether there is a new port of nautical tourism being built or the existing one is being reconstructed, it is most likely to take some time for the concessionaire to get a permit to commence construction. Within the documentation that has to be included when applying for issuance of the building permit, special importance must be given to the written consent for construction made by the concession grantor. Taking into account the legislative changes in the field of construction regulation over the past few years, the question arises as to whether it will be sufficient to request such consent with a conceptual design as the basis for issuing a location permit or the main design as a basis for obtaining a construction permit. When considering the issue of construction of buildings and other infrastructure objects in the ports of nautical tourism, attention should also be paid to the fact that the construction of certain buildings and infrastructure objects, in particular the water supply, sewage and energy networks, is explicitly stated as category of special use of maritime domain, the concession for which is granted in a procedure that is different from the procedure for concession for the economic exploitation of the maritime domain. Therefore, the question arises

whether the concessionaire of a nautical tourism port is authorized to carry out works involving the construction of buildings and infrastructure objects, such as water supply, sewage and energy networks and under what conditions.

Considering the existing arrangement of concession relations in the Concessions Act, the Maritime Domain and Seaports Act and subordinate legislation, a number of possible models will be considered through which third parties outside the concession contract could be involved in the construction of buildings and infrastructure objects as water supply, sewage and energy networks. One of the possibilities that is considered in order to meet the required infrastructure conditions, is changing the concession boundaries to enable the granting of a concession for the special use of maritime domain to third parties. In particular, the possible application of the sub-concession model is analysed, as one of the normative solutions to transfer certain rights and obligations from the concession contract, belonging to the concessionaire, to a third party, and the essential content of such contract is thoroughly considered due to the lack of detailed legal regulation of the said institute.

Maja Markovčić Kostelac



Ministry of the Sea, Transport and Infrastructure of the Republic of Croatia (Croatia)

Mr. sc. Maja Markovčić Kostelac is the State Secretary for Maritime Affairs in the Ministry of the Sea, Transport and Infrastructure of the Republic of Croatia. She was born in Zagreb in 1966. She graduated from the Faculty of Law, University of Zagreb in 1990. In 2008 she obtained her LL.M. in maritime law and law of the sea at the Faculty of Law, University of Split, with the topic „Implementation of the International Convention on Ballast Water 2004 in Closed and Semi-Enclosed Seas“, with special emphasis on the Adriatic. From 1990 to 1993 she worked in the Zagreb City Assembly on activities relating to international cooperation and protocol, and from 1993 to 2014 she worked in the Ministry of Maritime Affairs as a consultant, Head of Department for International and Legal Affairs, Head of Maritime Safety, Acting Director of the Directorate of Maritime Affairs, and Head of the Sector for Maritime Navigation, International and Legal Affairs. From 2014 until 2017 she was employed in the Croatian Shipowners' Association for International Navigation Mare Nostrum as Director of the Association, and her activities pertained to the promotion of the interests of Croatian shipping and the development of navigation in general. She has attended numerous diplomatic conferences as leader or member of the Croatian delegation, as well as board meetings of the International Maritime Organization and the International Labour Organisation. In addition, she was co-chairman of the Conference of States Parties to UNCLOS Convention, and participated in the preparation and negotiations for the conclusion of bilateral international maritime agreements, and in the negotiations for Croatian accession to the EU in the field of maritime affairs (Chapter 14 and Chapter 21). She worked on the preparation of almost entire Croatian maritime legislation, in particular the Maritime Code, the Act on Ports and the Maritime Domain, the Act on the Security of Ships and Ports and a number of implementing regulations, as well as the law on the ratification of international conventions in the field of maritime affairs. She is a member of the Croatian Maritime



Law Association and the Maritime Council of the Croatian Academy of Sciences and Arts. She is the national coordinator of the GLOBALLAST Project for Croatia, and has participated as an expert in several international projects in the field of maritime affairs. She has worked as a lecturer at the Department of Maritime Studies at the University of Zadar, the Faculty of Law in Zagreb, and the Faculty of Maritime Studies in Rijeka. Also, she has lectured at the International Maritime Academy in Genoa and Malmo and given talks at several professional and scientific conferences in the country and abroad. She has published many scientific papers in the field of international maritime law, maritime safety and protection of the marine environment in domestic and international publications.

Alternative Fuels in Marine Transport: Croatian Perspective

The article gives an overview of the Croatian legislative framework regulating the area of alternative fuels in transport and transposing the EU Alternative Fuels Infrastructure Deployment Directive (so called AFI Directive). The legislative framework in question consists of two pieces of legislation: the Alternative Infrastructure Deployment Act, adopted in December 2016, and its subordinate act: Government Decision on the Adoption of the National Policy Framework for the Deployment of Alternative Fuels Infrastructure and Development of Alternative Fuels Market in Transport (NPF), adopted in April 2017.

As alternative fuels policy is an excellent example of a cross-sectoral policy, where main hindering factor may be policy planning fragmentation on both horizontal and vertical factor, the article focuses on the national coordination system for policy planning and implementation set up by the Act and further developed by the NPF.

The article/presentation also takes stock of Croatian minimum infrastructure targets for electricity and liquid and compressed natural gas (LNG and CNG) in transport defined in the NPF. The overview of targets will show how Croatia's orientation as a maritime and tourist country was taken into consideration in the process of targets determination. Croatian initial targets for minimum sea ports LNG infrastructure and for e-vehicles road infrastructure are more ambitious than the Trans-European Core Network targets set up in the AFI Directive. The expansion of sea ports LNG infrastructure targets beyond Trans-European Core Network was a result of recognising the potential that alternative fuels infrastructure presents for further development of Croatian ports for decarbonisation of Croatian maritime coastal services. The planned coverage of non-Trans-European Core Network motorway sections with high power recharging points for e-vehicles is partly based on estimated demand for e-charging by tourists.

Finally, the planning of alternative fuels infrastructure is a difficult task based on uncertainty of market demand, future prices of energy and still developing technology. Therefore, the Croatian Alternative Infrastructure Deployment Act and NPF have foreseen a continuous revision of targets and measures every three years, based on the new information concerning market development. The first opportunity to revise the targets for maritime transport will be the adoption of liner maritime transport strategy planned not later than 2019.

Frans van Zoelen



Port Authority Rotterdam (The Netherlands)

Frans van Zoelen is CLO of Havenbedrijf Rotterdam N.V. (Port of Rotterdam Authority) and Legal Counselor to the International Association of Ports and Harbors (IAPH) (www.iaphworldports.org). Frans van Zoelen chairs the IAPH Legal Committee and is a member of the Legal Advisory Network of the European Seaport Organisation (ESPO) (www.espo.be). In the Netherlands he chairs the Dutch Legal Network for Shipping and Transport (www.dlnst.nl), and is a member of the Board of the Dutch Association for Maritime and Transport Law (www.nvzv.nl).

Frans van Zoelen holds a master's degree in civil and public law from Erasmus University Rotterdam, and has additional specializations in real estate law, company law, competition law and maritime law. With a master's degree in public administration from the Nederlandse School voor Openbaar Bestuur, Frans van Zoelen also has developed an expertise and strong interest in how the public and private sector interface, a focus essential for navigating complex port and industrial environments.

Frans van Zoelen lives in Rotterdam, the Netherlands, together with his wife and son.

The Port Services and Transparency Regulation and other Essentials for the Tool Kit of a Port Counsel

The presentation will focus on the management of the legal department of a European landlord port. Attention will be paid to relevant areas of law for being able to manage and run a seaport. Next to that consideration will be given to functional areas of knowledge which have to be understood to be effective as a port lawyer. Key areas in this respect are knowledge about financials to be capable to exercise competition law, the world of logistics in particular ports, stevedoring companies and shipping lines, the distinction between global initiated legislation (IMO) and European legislation, and the functionalities of branch organizations like the European Seaport Organisation (ESPO) and the International Association of Ports and Harbors (IAPH).

Further attention will be paid to strategies like building up legal capacity on central or decentral level in the organisation or doing both, and finding a balance between in-house and outhouse legal support.

And finally perspectives will be touched on how to stay relevant as a legal department: now and in the future.

If time permits I would like to conclude with reflections on the Port Services and Transparency Regulation.



PANEL



TRANSPORT RISK INSURANCE IN CROATIA: WINDS OF CHANGE?

Croatian membership in the EU and the consequent liberalisation of the insurance and transport markets has caused a series of changes in transport risk insurance, which continue to present new issues and challenges to this day. Entry into the single market brought with it a set of completely new rules and transport law institutes, which insurers have had to incorporate into their insurance products, i.e. adjust existing insurance terms for their clients in the transport sector. This change has, in turn, entailed a new vision of investment into and improvement of the transport insurance sector, adopted by a number of insurance companies who are active in this market segment, which only has a marginal position in the entire insurance market in terms of the total gross premiums and other parameters. The entry of new insurance companies into this market segment following market liberalisation and the Croatian accession to the EU has resulted in fiercer competition in the sector and raised issues that were previously seldom discussed. In a situation where the licence to operate a business in the single market and other vital requirements for running a transport business depend, among other things, on an adequate insurance coverage, the question is raised what is the significance of a (domestic) insurer for transport businesses? What kind of service is expected and how willing are domestic insurers to invest in the development of this segment of the insurance business, which is traditionally perceived as highly specialized, professionally demanding and not particularly lucrative? Will foreign insurers who have a long tradition of providing transport insurance coverage take over the domestic market, and will that mean better services for the domestic transport industry? Is there a need for lifelong training in the transport insurance sector? These and other issues will be discussed by reputable experts with rich experience in the domestic and foreign insurance industry, but also road and air transport. The panel will be moderated by Danko Družijanić from the Croatian Radiotelevision.

Participants in the panel

Hrvoje Pauković

Croatian Insurance Bureau, Zagreb

Hrvoje Pauković has been the Managing Director of the Croatian Insurance Bureau since 2007. After graduating from the Faculty of Law in Rijeka, where he earned his Master degree in Law at the postgraduate studies "Law of International Trade, Transport and Insurance", he began his career as an attorney assistant. He started his insurance career in 2001 at the largest Croatian insurance company *Croatia osiguranje d.d.* and was appointed Manager of Legal, Personnel and General Affairs in 2004. He also holds an Insurance Degree from St. John's University, School of Insurance, New York, USA. He passed his Bar Exam, gained the qualification of an authorized stockbroker and of a commercial mediator. He is a guest lecturer at the Faculty of Law in Zagreb and Rijeka, and lecturer at the University College *Effectus* for Law and Finance in Zagreb. He is a member of the Executive Committee of Insurance Europe, the Management Committee and Vice President of the Council of Bureaux (2014 — 2017), and member of the Management Committee of the Institute for European Traffic Law (IETL). He is a member of the Executive Committee of the Croatian Employers' Association, the Financial Business Association and the Working Group for implementation and monitoring of the National Road Safety Program (Croatian Ministry of the Interior). He is the President of the Croatian Association for Insurance Law, national branch of AIDA International.

Maja Bosnić Tabain

Croatia osiguranje d.d.

Maja Bosnić Tabain, Director of the Department for Processing Vessel, Aviation, Transport and Loan Insurance Claims. She graduated from the Faculty of Law of the University of Zagreb in 2004. She passed the bar exam in 2007. From 2004 until 2008, Ms. Bosnić Tabain worked at the Law Office of Dijana Vojković in Zagreb. She is a member of the Croatian Maritime Law Association and Croatian Association of Insurance Law. In 2013, she attended a professional advancement programme in London at the UK P&I Club, the Lockton brokerage firm and commercial law firm Hill Dickinson LLP. In 2017, Ms. Bosnić Tabain also attended the Residential Training Course organised by the NORTH of ENGLAND CLUB.

Margita Selan Voglar

Zavarovalnica Triglav d.d.

Margita Selan Voglar graduated from the Faculty of Law in Ljubljana in 1991, when she started working in Triglav Insurance Company Inc., Department of Transport and



Credit Insurance, in the field of transport insurance. Since 1999 she has worked as the Director of the Department for Transport security where she is responsible for the development of new products, underwriting and claims. Since 2009 she has been the President of the Committee for Transport Insurance with the Slovenian Insurance Association and the Vice-President of the Maritime Law Association of the Republic of Slovenia. She is also an arbitrator at the Permanent Arbitration Tribunal of Triglav Insurance Company Inc. She regularly participates in IUMI conferences and gives lectures on transport security and transport responsibilities. She works with the Chamber of Trades and Crafts and the Chamber of Economy. She has co-authored the book *CMR Convention — Convention on the Contract for the international Carriage of Goods by Road with commentary*.

Branka Sremac

Croatia Airlines d.d.

Branka Sremac is Director of Human Resources and Legal Affairs Department at Croatia Airlines d.d. She started working at the company in 1994. The Department manages and actively participates in different business processes such as litigation and corporate affairs, contracts, aviation insurance and human resources issues including advising on all aspects of labour law and relations with trade unions. She gained extensive experience in working in international environment, with international law firms, companies, banks and aviation insurers and brokers. Branka graduated from the Faculty of Law of the University of Zagreb in 1992, and passed her Bar Exam in 1997. From 1994 to 2004 she attended a number of training courses in the field of air insurance and air law: Aircraft Financing, Euromoney, London (2004); Aviation Insurance, Willis, London (2001); Quality management ISO 9000, Oskar Centre for Development and Quality (1998); International Air Law, International Air Transport Association (IATA), Geneva (1996); Aircraft Acquisition Contracts, International Air Transport Association (IATA), Geneva (1994). Also, she participated and gave presentations at numerous Croatian and international conferences organised by International Air Transport Association (IATA), European Air Law Association (EALA), and others. She fluently speaks English and French.

Miho Klaić

FORTIUS d.o.o. insurance and re-insurance brokerage

Miho Klaić is founder of the FORTIUS d.o.o., a company engaged in insurance and re-insurance brokerage. Since 2005 he is director of the company that runs its business in Croatia, Slovenia and Bosnia and Herzegovina. Miho is responsible for organisation, planning, finances and controlling of all organisational and sales activities of the company as well as establishing strategic partnerships with major world insurance brokers. He is in charge of relations with key clients and introduction of specifically tailored insurance programmes for clients, based upon innovative solutions. He has more than 20 years of experience in the field of insurance and re-insurance. Also, he is President

of the Insurance Brokers Association within the Croatian Chamber of Commerce.

Anton Kolak, M. sc.

KOLTRANS d.o.o.

Anton Kolak completed his studies in the field of traffic sciences in 1984 and earned his degree as an Engineer of Traffic Sciences. At the Faculty of Maritime Studies in Rijeka (formerly Faculty of Maritime and Traffic Studies), he obtained a master's degree in the field of traffic technology in 1992. Since 1985 he has been employed at the Croatian Railways. From 1991 to 1994 he worked in a private company *Croatia kombi Zagreb* as a procurator. In 1994 he founded his company KOLTRANS d.o.o. where he is the sole owner and director. The company deals with the transport of goods in international and domestic transport. He was a longtime president of the Supervisory Board of the Association of Croatian Carriers. He is a member and secretary (in third term) of the Examination Commission within the Croatian Chamber of Traffic Technology and Transport Engineers (HKIP) in the vocational class of road traffic engineers. He fluently speaks English.

Moderator:

Danko Družijanić

Croatian Radiotelevision — HRT





PRESENTATIONS ABSTRACTS



Dr. Slađana Aras Kramar

Dr. Aleksandra Maganić

University of Zagreb, Faculty of Law, (Croatia)

Some Aspects of Maritime Arbitration in Croatian, English and German Law

This paper portrays an analyses of some organisational–competence–functional aspect of the maritime arbitration in Croatian, English and German law, considering the data of the organised and conducted maritime arbitrations at the Permanent Arbitration Court at the Croatian Chamber of Economy (hereinafter PAC–CCE) in which organisation are recorded (though still modest) certain maritime arbitrations.

The analysis of the maritime arbitration in Croatian law will be preceded by an analysis and discussion of the organisational–competence–functional aspects of the maritime arbitration in English and German law, in particular considering the maritime arbitrations at the London Maritime Arbitrators Association (hereinafter LMAA) and the German Maritime Arbitration Association (hereinafter GMAA). The choice of these two comparative systems is determined by the fact that in the context of these systems operate *supra* mentioned European maritime arbitration centers, and by the fact that maritime arbitrations at the LMAA lead in relation to other maritime arbitration centers. Also, the choice of the German comparative system is determined by the historical reasons, this means the strong influence of German law and the doctrine on Croatian law and the doctrine of procedural law.

The review of the organisational–competence–functional aspects of the maritime arbitration in English and German law follows the system established by the authors. First, the concept and specificities of maritime arbitration in the compared systems, as well as the sources of arbitration law will be discussed. Then the impact of the maritime arbitration clauses on the court jurisdiction in the compared systems will be analysed.

This paper considers the basic characteristics of the compared arbitration centers (LMAA, GMAA). After the comparative review of the arbitration centers, an analysis of the basic institute of the arbitration proceedings in the maritime disputes of the compared centers will be provided, namely: arbitration agreements, arbitral tribunal (appointment, number of arbitrators to be appointed, rights and duties of arbitrators), principles of arbitration proceedings, arbitration procedure, special (accelerated, written, summarised) arbitration proceedings (in relation to the value of dispute), evidentiary proceedings, costs of the arbitration proceedings, arbitration awards, remedies against the award, and enforcement of (domestic) awards.

In the final part of the paper an indication of the tendencies of convergence and divergence regarding the comparative systems included into the analysis will be given. Considering the comparative analysis, as well as analysis of the historical sources of the Croatian maritime arbitration and (still modest) practice, some projections *de lege ferenda*

will be indicated in order to encourage development of the practice of the maritime arbitration in Croatia. It will particularly be considered the organisational aspect, the need to establish a specific maritime arbitration center of the PAC–CCE whose seat will be outside of Zagreb, on one of the maritime destinations.

Dr. Božena Bulum

Croatian Academy of Sciences and Arts, Adriatic Institute, (Croatia)

Prohibited Agreements of Competitors on Prices and Their Particularities in Marinas Case in the Republic of Croatia

Agreements of competitors on prices of goods and services are strictly forbidden by competition rules. Horizontal agreements on prices concluded by direct competitors are considered as particularly harmful to competition, because these agreements regularly lead to the elimination of competition on the relevant market. These agreements represent restrictions of competition by object, for that reason it is not necessary to examine their anti–competitive effects. Restrictions of competition by object are those that by their very nature have the potential of restricting competition. This presumption is based on the serious nature of the restriction and on experience showing that restrictions of competition by object are likely to produce negative effects on the market. Content of the agreement and its objective aims are relevant for the assessment whether that agreement has aim to restrict competition. In the case of horizontal agreements restrictions of competition by object usually include price fixing, output limitation and sharing of markets and customers as well as other restrictions of competition at the expense of the other competitors and consumers. These agreements are prohibited *per se*, regardless of whether or not their anti–competitive effects occurred. Although in the competition law the notion of agreement is interpreted extensively and prohibited are not only explicit agreements of the competitors on prices but also the tacit once, existence of these agreements in practice is often very difficult to prove. As Croatian competition law doesn't include detailed rules on exchange information and agreements between competitors, Croatian Competition Agency in these cases uses the European Union *acquis* as an interpretative instrument for the application of the Croatian competition rules. Judgements of the Court of Justice of the European Union and General Court of the European Union are particularly important instruments for overcoming legal voids and uncertainties relating to the interpretation of Croatian rules on competition. In this paper we analyse the decision of the Croatian Competition Agency in which is determined the existence of a prohibited agreement of undertakings on the future prices of berths in marinas on the territory of the Republic of Croatia (case "Marinas"), as well as the judgement of the High Administrative Court of the Republic of Croatia and of the Croatian Competition Agency which were brought after that. Many disputable issues, factual and legal, which appeared in that case are being examined, such as existence of cartel agreement between marinas, determi-



nation of the relevant market, providing of nautical tourism services in ports open to public traffic and sports ports, role of the Croatian Association of Nautical Tourism etc. Relevant judgements of the Court of Justice of the European Union and General Court of the European Union which Croatian Competition Agency used as an interpretative instrument for the application of the Croatian competition rules are analysed such as *C-48/69 ICI v Commission*, *C-114/73 Suiker Unie v Commission*, *C-199/92 Hüls AG v Commission*, *C-8/08 T-Mobile Netherlands BV and Others v Raad van bestuur van der Nederlandse Mededingingsautoriteit*, etc., as well as previously issued decisions of the Croatian Competition Agency on horizontal agreements on prices such as *Autobusni promet d.d. Varaždin i dr. („Kartel autobusnih prijevoznika)*, *Biserka-ST d.o.o., Auto škola Centar d.o.o. i dr. („Autoškole u Splitu“)*, *Hrvatski centar za razminiranje protiv AKD-Mungos d.o.o. i dr. („Razminirači“)*, *Europapress Holding d.o.o. i NCL Media Grupa d.o.o. („EPH i NCL Media Grupa“)*, *Tehnoplast d.o.o. i dr. („Upravitelji zgrada iz Splita“)*, *Birdom d.o.o. i dr. („Trgovci uredskim materijalom“)*, etc. The overriding goal of the present paper is to provide a critical evaluation of the decisions of the Croatian Competition Agency and High Administrative Court of the Republic of Croatia brought in “Marinas” case and Croatian rules applied in that case.

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Antitrust Damages Claims Under EU and National Law: A Transportation Sector Focus

I. Introduction. Precedents of Cartels in the Transportation Sector That Result in Claims for Damages

Damage claims for breach of the European and national antitrust laws are undoubtedly one of the most exciting areas of business law. Indeed, this is a field which lies at the crossroads between enforcement of competition law (an area of which primarily focuses on the economic general interest) and satisfying the private interest of those companies that have been harmed by a cartel or by anticompetitive conduct more generally. Although this may still be considered to be an emerging area, there are already quite a few cases in the transportation sector. On this session, we'd like to cover the European law of antitrust damages and its application to some specific examples drawing from our law firm experience.

1. Cartel in the trucks sector

In July 2016, the European Commission (EC) fined five truck manufacturers due to a cartel, and punished them with the highest fine imposed on a cartel. In 2011, the EC confirmed unannounced inspections in the truck manufacturing sector: initial investigations were conducted against MAN, Volvo/Renault, Daimler, Iveco and Scania. MAN finally and voluntarily revealed the existence of a cartel to the EC. The cartel operated during 14 years (1997 through 2011). The cartel coordinated:

(i) Prices at “gross list” level for medium and heavy trucks in the European Economic Area (EEA).

(ii) Timing for the introduction of emission technologies for medium and heavy trucks to comply with the increasingly strict European emissions standards (from Euro III through to the currently applicable Euro VI).

(iii) The passing on to customers of the costs for the emissions technologies required to comply with the increasingly strict European emissions standards (from Euro III through to the currently applicable Euro VI).

Volvo/Renault, Daimler, Iveco, and DAF plead guilty, in order to reach a settlement with the EC. Such settlement contains a record fine of € 2.926 million. Scania has not joined the settlement and is therefore still under investigation.

2. Other cartels in the transport sector

In recent years, a number of cases have been investigated and decided in which carriers or companies in the transport sector of passengers or all types of goods were finally punished. The most recent sanction in this sector, apart from truck cartel, commented, is the cartel in “blocktrain”.

In July 2015, the EC imposed fines of € 49 million on Express Interfracht, part of the Austrian railway incumbent Österreichische Bundesbahnen, and Schenker, part of the German railway incumbent Deutsche Bahn, for operating a cartel in breach of EU antitrust rules in the market for so-called cargo “blocktrain” services. The three companies fixed prices and allocated customers for their “Balkantrain” and “Soptrain” services in Europe for nearly eight years (from July 2004 to June 2012). More specifically, in order to limit competition between them, the companies agreed on several restrictive practices:

— They agreed and allocated existing and new customers as well as setting up a customer allocation scheme including a ‘notification system’ for new customers;

— they exchanged confidential information on specific customer requests;

— they shared transport volumes contracted by downstream customers;

— they coordinated prices directly by providing each other with cover bids in respect of customers protected under their customer allocation scheme and coordinated sales prices offered to downstream customers.

2.2. Spain

In Spain, the National Markets and Competition Commission (NMCC) has fined in recent years several anticompetitive agreements made by carriers. In 2015, the following cases were punished: the Balearic transport of passengers (in process) and refrigerated transport. In addition, this year the NMCC has punished two transport companies for price and commercial conditions fixing:

(i) In November 2016 the NMCC fined two security companies (Prosegur and Loomis) with € 46.4 million, and two of their managers with € 52,600 by market sharing and

manipulation of funds during seven years.

(ii) In September 2016, the NMCC fined fifteen international moving companies with € 4.09 million due to the infringement of Articles 1 of the Spanish Competition Act (SCA) and 101 TFEU consisting of a cartel for more than fifteen years. These companies signed an agreement to fix prices and other commercial conditions in concert, to share the market and to exchange commercially sensitive information.

Foremost, the NMCC has imposed multimillion fines in connection with the Valencia and Barcelona harbors, a key infrastructure in the transportation sector.

II. The EU Antitrust Damages Directive

The questions below are addressed bearing in mind (i) EU Directive 104/2014 and (ii) the national experience.

1. The Directive

On 26 November 2014, the European Parliament and the Council launched Directive 2014/104/UE on antitrust damages actions (Directive). The Directive makes it a lot easier for victims of antitrust violations to claim compensation. Amongst other things, it will give victims easier access to evidence they need to prove the damage suffered and more time to make their claims. Up until now it was difficult to exercise this right in practice for all but the biggest companies. By harmonizing procedures all over Europe, litigation to recover losses will become a realistic option for smaller companies, SMEs and consumers. The Directive is designed to achieve more effective enforcement of the EU antitrust rules overall: it fine-tunes the interplay between private damages claims and public enforcement, and preserves the attractiveness of tools used by European and national competition authorities, in particular leniency and settlement programmes.

Because the Directive touches on issues of harmonization in the internal market, Parliament and Council adopted it under the ordinary legislative procedure. First, in the majority of cases where the Commission has established an infringement of EU competition rules, the majority of victims have remained uncompensated. Second, the vast majority of cases have been brought in only three countries: the UK, Germany and the Netherlands, which are the jurisdictions generally perceived as most attractive for a number of reasons. In around 20 Member States there are few or no follow-on actions regarding Commission infringement decisions. Third, the majority of cases are brought by big businesses that purchase directly from the infringers. Indirect purchasers, SMEs and consumers very rarely bring cases.

Once implemented, the Directive will significantly improve the situation of underdeveloped and uneven private enforcement of the EU competition rules. It removes important obstacles to effective damages actions in Member States' national legislation. It also harmonizes national laws in the field of damages.

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The Management and Organisation of Cross-Border Transportation Services Through the European Grouping of Territorial Cooperation (EGTC): From Theory to Practice

Regulation EC 1082/2006 introduced the possibility for States, regional and local authorities to establish a European Grouping of Territorial Cooperation (EGTC), an entity provided with legal personality and legal capacity, whose objective is to facilitate and promote territorial cooperation between its members with the aim of strengthening economic, social and territorial cohesion. The breadth of the tasks which can be entrusted to EGTCs, the openness of membership also to private law undertakings (recently introduced by regulation EU 1302/2013, which amended regulation EC 1082/2006) and the enhanced possibility of receiving support from both European and national funds make the new legal instrument especially appealing for the establishment of cooperation schemes in the area of transportation. Indeed, several EGTCs have already been (or are about to be) set up with a view to organising and improving transportation across the territory of the partners involved. In this regard reference can be made, for instance, to (a) the EGTC Central European Transport Corridor (CETC), which has been established for the purpose of facilitating and promoting transport accessibility along the length of the North-South axis of multimodal transport from the Baltic to the Adriatic Seas and possibly along the potential branch of the corridor towards the Black Sea, enhancing the compatibility of the transport infrastructures among the regions involved, ensuring support and improving conditions for the development of intermodal transport connections, thus spreading environmentally friendly solutions, as well as initiating works and carrying out preliminary feasibility studies of the CETC — ROUTE 65 Corridor; (b) the EGTC Interregional Alliance for the Rhine-Alpine Corridor, established with a view to improving transportation services along the Rhine-Alpine Corridor, between Amsterdam and Genoa; (c) the project of EGTC Inforailmed which aims at improving railway transportation services in the cross-border area covering the territory of the Italian region Liguria, the French region Provence-Alpes-Côte d'Azur and the Principality of Monaco, where national borders cannot presently be crossed without intermediate reloading because of lack of coordination and lack of interoperability of railways on the different sides of the borders. In the light of the above, the present paper aims at assessing the relevance of the EGTC for the management and organisation of cross-border transportation as well as for the governance of transport infrastructures both in the territory of the European Union and of potentially interested third States. In this view, the purpose of the present analysis is two-fold in so far as it consists of (a) a theoretical legal analysis of the main features of the new instrument which make it particularly suitable for the management and organisation of cro-

ss-border transportation, as well as (b) a detailed case study of the above mentioned recently established EGTC Interregional Alliance for the Rhine–Alpine Corridor. As far as the first part is concerned, the paper will focus on the exam of the provisions of regulation EC 1082/2006 which appear to be most significant for the purpose of organising and managing cross-border transportation services, such as (i) the (recent) openness of membership of EGTCs also to private undertakings entrusted with operation of services of general economic interest (art. 3, par. 1, e, introduced by regulation EC 1302/2013), which renders the instrument at issue particularly suitable for the establishment of public–private partnerships in the area of transportation; (ii) the possible accession of members from third countries or overseas countries or territories (art. 3a), which widens the territorial scope of the cooperation that can be established through the instrument at issue; (iii) the opportunity to finance EGTCs' activities by means of the EU and/or national funds; (iv) the comprehensiveness of the tasks which can be entrusted to EGTCs, which only have to fall within the competence of its members under their national law; (v) the possibility to assign to EGTCs the management of transport infrastructures, including the competence to define the terms and conditions of its use as well as the tariffs and fees to be paid by the users (art. 7, par. 4); (vi) the power of EGTCs to award public contracts under EU directive 2014/24/EU (art. 39), which enhances the capacity of the new legal instrument of efficiently organising transportation services in a cross-border area, e.g. by acquiring interoperable devices compatible with the (potentially) different legal standards in force in the territories of the States involved in the cooperation. On the basis of such theoretical and preliminary introduction, the second part of the paper will then focus on the case study of the EGTC Interregional Alliance for the Rhine–Alpine Corridor EGTC, which — as said above — has been established in order to facilitate and promote the territorial cooperation among its members and to jointly strengthen and coordinate the territorial and integrated development of the multimodal Rhine–Alpine Corridor (between Amsterdam and Genoa) both from the regional and local perspective. To this end the EGTC is supposed to foster a joint development strategy for the multimodal Rhine–Alpine Corridor, direct funds to corridor related activities and projects, provide a central platform for mutual information, exchange best practices, improve the visibility and promotion of the corridor. Furthermore, the analysis of the members of the EGTC at issue clearly illustrates the ability of the new instrument to involve all of the different actors engaged in the governance of transport-related issues of the cross-border area, such as port authorities (e.g. Port of Rotterdam, Port of Antwerp), local authorities (e.g. Stadt Mannheim), regional authorities (e.g. Regione Piemonte), other public entities (e.g. Regionalverband Mittlerer Oberrhein, Metropolregion Rhein–Neckar) and private entities (e.g. Uniontrasporti, Duisport–Gruppe). In conclusion, the combination of the two sections above described will show, both from a legal and practical point of view, that the EGTC is a particularly suitable legal instrument for the management and improvement of cross-border transportation services, not only because of its

versatility (as far as both its potential tasks and territorial scope are concerned) but also because of its capacity of involving all of the different actors (both public and private) concerned by the management of the interested cross-border area.

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Rights of Persons with Disabilities and Reduced Mobility in the EU and Croatian Transport Law

Passengers are, over the past ten years, placed at the heart of the European transport policy. Within the realm of passengers' rights, and in order to provide equal opportunities for travel across all modes of transport to all citizens, special attention was given to the world's largest minority group — people with disabilities. The establishment of an appropriate legal framework for passengers with disabilities is in a line with requirements of the Art. 9 of the UN Convention on the Rights of Persons with Disabilities and Art. 26 of the Charter of fundamental rights of the European Union. Moreover, in its transport policies European legislator went one step further by deciding to ensure the same set of rights to all those 'whose situation needs special attention and adaptation to the person's needs of the services made available to other passengers.' In order to achieve this objective, rights of disabled passengers and passengers with reduced mobility are regulated in several regulations, covering all modes of transport. The first and the only one exclusively devoted to these passengers regulated the rights of disabled persons and persons with reduced mobility in air transport dates from the 2006. In the following five years, modelled after this regulations, special chapters were adopted in all regulations governing passengers' rights. In spite of their direct applicability not only on the carriage of passengers between Member States of the European Union, but also on the domestic carriage, the level of protection differs in certain modes of transport. This is partly due to the limited scope of application of specific regulation (for example in transport by road, sea and inland waterways) and partly due to the fact that Republic of Croatia granted exemptions from the application of certain provisions (for example, in the transport by rail, the provision on compensation in respect of mobility equipment or other specific equipment).

A comparative review of applicable provisions in all modes of transport showed that there is the common core of rights (in different shades) guaranteed to passengers with reduced mobility: non-discriminatory access to transport, right to free of charge assistance both, on terminals and ports as well as on board of the vehicles, right to information in accessible formats. These common rights may be restricted under specifically prescribed circumstances which should be interpreted very narrowly, so as to avoid abuse. With the aim to ensure proper implementation of the EU passenger rights, all Regulations contain provisions



relating to the enforcement and complaint procedure, but the certain degree of harmonization of the complaint regimes between transport modes is desirable.

The purpose of this research is to examine the extent of the achievement of their rights to free movement. Fragmented approach to traveling rights of persons with disabilities and reduced mobility resulted in numerous differences in those regimes. Some of them are consequences of the specificities of the different transport sectors. However, there are some rules whose appliance in all modes of transport could enhance the quality of protection of passengers with disabilities and reduced mobility. Thus the adoption of coherent and standardised rules across modes of transport is warranted.

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The Liability of "Makers"

Makers are suppliers of goods and services, the activity of which is denoted by a high degree of technical competence. In fact, the progress of technology and science has led to the individualization of peculiar figures of suppliers for highly specialized products and services.

Typically, from when a vessel is built, it is within her shipowner's interest to ensure that certain components of the vessel are provided by selected makers, as this will set the quality of the component and consequently of the vessel. For this purpose, a "makers' list" is normally attached to shipbuilding contracts and throughout the operation of the vessel the owners tend to establish a direct relationship with such makers, so as to ensure the correct maintenance of the components.

This has led to a two-fold phenomenon:

- (a) the enhanced and specialized knowledge of makers has turned into a form of asymmetry of information, vis-à-vis the end users of the component, i.e. the shipowners; and
- (b) a technological dependence characterizes the relationship between shipowners and makers, in respect of the maintenance of relevant components, as these cannot be put to the general care of appointed shipyard, but will often have to be put to the attention of surveyors of the maker itself.

But most importantly, the role of the maker has become a crucial factor in the determination of the standards of diligence of shipowners with regard the maintenance of vessels. The role played by makers in the industry, indeed, has an impact on the numerous areas of maritime law, which involve the assessment of the shipowners' diligence in the maintenance of vessels.

Shipowners could incur (amongst others) the following consequences if, by failing to follow the makers' recommendations, they perform negligently in maintaining the conditions of the vessel:

- (i) The vessel could result unseaworthy for the purpose of

the carriage of goods by sea, according to international law conventions (such as the Hague and Hague Visby Rules) and national legislations, thereby including the Italian Code of Navigation.

- (ii) Failure to comply with the makers' recommendation could cause the shipowner to breach the obligations arising under charterparties as to the due diligence to be had in the maintenance of the vessel's conditions (e.g. the duty to maintain under clause 3 of the Shelltime 4 form).

- (iii) Most importantly, the makers' recommendations have become an important element to be taken into consideration by the vessels' classification societies in determining the conditions necessary for the vessel to be in class.

- (iv) Further, depending on the extent of failure to comply with the technical requirements set by the maker, this could provide insurers with a gross negligence defense.

- (v) Apart from the above, failure to comply with the makers' technical standards could have repercussions on the commercial employment of vessels, as it could jeopardize their vetting approvals.

- (vi) Moreover, makers' recommendations are typically matters to be taken into consideration in terms of ISM Code and the shipowners could easily fall short of its obligations under the Code, if such recommendations are overlooked.

- (vii) Finally, in extreme circumstances, failure to comply with technical requirements, established by makers, could even determine criminal law liabilities.

Moving from these premises, the paper intends to analyze the potential liabilities that may be imputed to the makers upon a preliminary distinction between the liabilities that may arise in the aftermaths of the acquisition of unit, and the liabilities that may arise subsequently and irrespective of the moment of her acquisition.

The discussion will include the consideration of the trend by which makers continuously divulge technical information (often in the form of technical recommendations and service letters), upon which operators often cannot avoid relying during the maintenance and operation of the vessel. The question will, then, be raised as to what liabilities follow for the maker from such informative material.

Finally, few guidelines will be drawn with an aim to assist shipowners in the daily handling of their relationships with makers.

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The Extent of the Shipowner's Right to Affirm the Charter Following Early Redelivery of the Vessel

Under time charters, the ship is chartered for a particular duration. The duration indicates the period of time which the charterer is allowed to use the vessel within trading limits. By way of chartering a ship for a particular period,



the charterer impliedly promises that the ship will be returned to the shipowner at the end of charter duration. In spite of existence of this implied obligation, unfortunately in practice the charterer does not hesitate to return chartered ship before the end of charter duration.

Early redelivery of the vessel by the time charterer constitutes a common cause of many disputes in the context of time charters. Such an action by the charterer is especially popular when the charter market conditions are negatively affected by an economic crisis. Time charterer agrees to pay a fixed rate for charter service from delivery to redelivery of the ship under time charters. This means that if the charter rates in the market drop, existing charters become unattractive from the charterer's perspective. In this situation, instead of continuing to be bound by their existing charters and agreed charter rate, most charterers prefer to return to the market and recharter another ship. It makes commercial sense for the charterer to behave in this way as he can protect himself from the fluctuations in the charter rate and increase his own profits. In some cases, the reason behind early redelivery of the vessel may also be simply that the charterer no longer needs the ship. For example, where there is no cargo to carry and the charterer does not find any employment, it will be sensible for the charterer to return the vessel early instead of continuing to pay hire for a vessel which he does not need.

Although the charterer's conduct to redeliver the vessel earlier than the expiry of charter duration is understandable due to the reasons indicated above, this does not change the fact that he fails to comply with his implied promise to redeliver the vessel to the shipowner at the end of charter duration. The charterer's conduct in returning the vessel before the end of the charter is treated as a repudiation of the charter under English law and does not bring the charter to an end automatically. In such a case, two options are provided to the shipowner. The shipowner can elect to refuse early redelivery of the vessel, affirm the charter, continue to provide the charter service and claim the agreed charter rate for the rest of the charter period when it is due. Alternatively, he can elect to accept early redelivery of the vessel, terminate the charter and bring a claim for damages. Although the termination right is always available to the shipowner following early redelivery of the vessel, his right to affirm the charter is not unfettered. This right can be restricted where the shipowner does not have any legitimate interest in continuing to perform the charter. The legitimate interest exception is indeed a little vague and has caused different interpretations since it was first introduced in *White and Carter*. Different criteria such as 'adequacy of damages', 'wholly unreasonable' have been introduced over time for courts to consider in early redelivery disputes while deciding whether or not the shipowner has a legitimate interest in continuing to perform the charter.

The purpose of this paper is to analyse these criteria, discuss their adequacy and practicality, and answer the question about the extent of the shipowner's right to affirm the charter and continue to claim agreed charter hire in case of early redelivery of the vessel.

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Liberalization of Railway Freight Transport in Croatia

A step toward freight transport liberalization and creation of single European railway market was made back in the 1990' when the first railway directives were adopted. First legislative measures were made in order to manage accounting separation of infrastructure management and transport operations. The following Package of directives enabled an access to the single freight railway undertakings from the EU Member States on TEN-T Network, and further step envisaged within the same Package was a free access to the network for freight transport operating activities (domestic and international). Through the Second Railway Package in 2004, the whole EU freight transport market of was opened. At the same time, in the Republic of Croatia, in accordance with the Act on Croatian Railways (OJ No 53/94, 139/97 and 162/98), the activity of public transport of passengers and goods in domestic and international railway transport, as well as the construction, modernization and maintenance of railway infrastructure and the modernization and maintenance of railway vehicles as an activity of public interest was entrusted to the public company HŽ Croatian Railways, which shows that the activity in this period could not be performed by any other railway undertaking, apart from this public company. The Amendments to the Railways Act (OJ No 123/03, 30/04, 153/05, 79/07, 120/08 i 75/09), have prescribed that, starting from the date of accession of the Republic of Croatia to the European Union, the licenses issued to railway undertakings by the competent authorities of other Member States of the European Union would be accepted. This was accomplished on 1 July 2013 and it could be taken as the date of legal liberalization of the rail freight transport in the Republic of Croatia. According to the Amendments to railway legislature and Railway Act (OJ No 94/13, 148/13) from mid-2013, the freight transport market was completely liberalized and Recast Directive was implemented into the Croatian legislation. Real or practical liberalization happened in March 2014 when the first new rail freight undertaking fulfilled all the conditions for carrying out activities of rail freight transport. The first competition to incumbent freight rail undertaking has actually appeared when new entrants achieved first transport results at the end of 2015. The possibility of using rail infrastructure for all rail freight undertakings and the emergence of new undertakings sets certain requirements in providing the services by infrastructure manager. In addition to the basic service of using lines and tracks for train, the key role was placed on service facilities' managers and service providers in service facilities. Definition of railway services and methodology for calcula-



ting the charges are a key factor for market transparency that should be directed to the needs of railway undertakings. At the time of the integrated railway companies the segmentation service was not needed, and the necessity for definition of rail services appeared during the separation of rail transport from the management of railway infrastructure. In Croatia, according to the Railway Act (OJ No 94/13, 148/13), railway transport market is consisted of services and entities in the market. So defined market encompasses the infrastructure manager and operators of service facilities', providing the railway services selected as needed in different groups: minimum access package, access to service facilities and to the services provided in these facilities, including track access to service facilities, additional and ancillary services. Railway infrastructure is defined by the Railway Act as a public good in general use, which under equal and transparent conditions should be available to all railway undertakings. The liberalization of railway market tends to improve the quality of rail services for the railway transport users and in the same time reduce the maintenance costs of railway infrastructure and traffic management for the amount of compensation which is collected from the railway undertakings. Market development is reflected in the increasing number of service users, but also in the number market condition indicators, and the amount of services used, which will be presented through market indicators in the final part of this paper.

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The Liability on the Transshipment During a Multimodal Transport

Although the transport industry becomes more and more efficient every year by combining new technology with modern strategic ideas, the international transport law is still at least one step behind this development. Since already more than 50 years, the container enables the industry to combine different transport modes during one multimodal transport. Unfortunately, the approach to harmonize the International Multimodal Transport Law failed in 1980. Contrary to that, there is at least one International convention — mandatory and uniform — for each single transport mean. But combining different transport conventions is not as easy as the actual combination of different transport means. Besides the question, which convention shall apply in case it is uncertain, where the damage occurred during the entire multimodal transport, it is very questionable, when the legal liability regimes of one convention starts or ends. But this is a crucial point if one considers the case, that the damage occurred during the transshipment. The application scope of this term must be interpreted in a factual way and therefore includes several steps before and after the airport–border. Due to new business models, the freight forwarder, who must be considered as carrier in certain circumstances, tries to do as much as he can by his own and shift the original –airport–steps to points outside the airport–area. In addition

to that there are numerous actors with various contracts within this area, that have to be investigated in detail.

The transshipment is also the stage of the multimodal transport, where the different mandatory rules meet each other. Since the focus of the research lies on the air–road combination. The ambits of the CMR and the Montreal Convention are important to consider. Both have a certain impact to the multimodal transport, but how far it reaches is uncertain. Are they closely linked, overlapping or do they even generate a gap for national law. If one wants answers, he has to look into their particular liability regimes. Neither the liability period of the CMR — the taking over until delivery — nor in the Montreal Convention — the period, during which the cargo is in charge of the carrier — is specified by the Conventions. So, it is a matter of interpretation. An international consensus is visible that it must be an agreed period of responsibility and ability to protect the cargo from harm. The determination is in fact a task for the parties. If one considers the enormous number of actors within the transshipment area, this becomes a matter of attribution and the question, who acts on whose (unimodal) carrier's behalf. It is clear, that this period cannot be extended endless since it is bound to the application scope of the certain conventions. The room for contractual freedom is given, as well within the ambit of the conventions' regimes since they remain silent about certain questions as well as outside their ambits. I am going to show you the different possibilities the parties have and how far they are restricted by the mandatorily applicable conventions.

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Sixth Freedom: Flying Under the Regulatory Radar?

For the last 70 years, the right of an airline to carry passengers or cargo from one state to the other has been regulated by air service agreements (hereinafter: ASAs) between the two respective countries. As the air transport progressed into big and powerful industry with considerable market share, the ASAs followed — from restrictive agreements limited strictly to transport between the signatory states, they developed into bilateral and multilateral agreements providing underlying traffic rights for the consummation of various commercial arrangements between air carriers. In the context of freedoms of the air, ASAs did not only allow third and fourth freedom (the right to carry traffic from home state of the operator to another state, and vice versa) but started granting the fifth freedom as well (the right granted by one state to another to carry traffic destined to or originating from the third state).

Freedoms beyond the fifth were almost never subject of ASAs. In the world of state owned carriers and highly regulated airline activities, it was not very lightly that any of them would be granted traffic rights between two foreign countries (foreign meaning that none of them is the home state of the carrier). Seventh, eighth and ninth freedom



(which include rights to carry passengers or cargo between two foreign countries without any link to home state of the carrier, and the right to operate within a foreign country) were granted to foreign carriers extremely rarely and for justified reasons (e.g. tourism or sports events). As for the sixth freedom, which is usually defined as the right to carry traffic between two other states via home state of the carrier, there was rarely any need to regulate it. The definition of sixth freedom, as explained above, was the basis for some theories that a sixth freedom is nothing more than a combination of third and fourth freedom. This view is understandable if taken into account that for decades passengers had to buy separate tickets and collect their baggage after each flight and there was a lot less knowledge or visibility of passenger's final destination, if any.

Further development of air transport led to emergence of interline and code share agreements, airline alliances and electronic ticketing. For a passenger, this means that not only does he not have to have a paper ticket anymore or collect his baggage at every stop, but it also means he doesn't have to buy separate tickets for flights operated by different airlines. A service could be provided on a single contract of carriage consisting of two or more flights, i.e. legs of the journey. In terms of traffic rights, what was once a clear picture started to be a blurry one. With commercial and technical possibilities of providing services between two foreign countries, and with a deficient regulatory framework which was drafted decades ago, more and more carriers use this situation to effectively exercise more rights than originally planned by the regulators. This practice is also heavily supported by airports of the home state which enjoy increased passenger numbers and expansion of their business.

In this paper I will examine the types of traffic rights granted by international agreements and their evolution as the airline business changes. Furthermore, I will analyze recent trends in airline practices and its consequences on the competition. Finally, I will give my reasons for believing that the sixth freedom is far more than a simple combination of third and fourth freedom and should therefore be an unavoidable part of any future air services agreement.

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The Main Legal Issues in the Shipment and Transport of Dangerous Goods by Sea Under English Law and International Carriage Sea Conventions

Lately, the shipment of dangerous cargo is a common practice in international sea trade. Even though most dangerous goods are accepted for shipment either pursuant to terms specifically negotiated between the parties to contracts of carriage or in compliance with express terms contained in standard contracts, including a proper declaration, the sad truth is that there times where carriers

are carrying a dangerous cargo without their knowledge. Unfortunately, there have been a number of cases in which crews and their ships have been suffered harm from explosions or fires caused by dangerous cargoes because shippers wrongly declared them. It also happens that they get incorrectly or incompletely named, as different companies, countries and trades may use different names for specific dangerous cargoes. This article discusses the contractual liability as well as the obligations of the people, who are involved in both shipment and carriage of dangerous goods under English Law (and the English Law's interpretation of Hague/Hague Visby Rules) and Rotterdam Rules.

For the purposes of this article, it should be pointed out that when I refer to the term "dangerous goods", both legally and physically "dangerous" goods are included. It is true that according to both Hague/ Hague Visby Rules, there is no definition for "dangerous goods". The same applies with regard to Common Law. Goods can be "dangerous" either because they are inherently dangerous, for instance, explosives, or because they have a propensity to become dangerous when faced with extraneous circumstances. However, the House of Lords held that the words "dangerous nature" in Article IV, Rule 6 under Hague/ Hague Visby Rules was to be given a broad meaning and not only restricted to "flammable, explosive" nature of cargo. The groundnut cargo was dangerous within the meaning of this Rule because it was liable to give rise to the loss of other cargo by dumping at sea. Therefore, Rule 6 does not supersede the common law rule in respect of goods which present legal hazard.

It is mentioned that the main reason for which dangerous goods tend to be misdeclared by shippers is the avoidance of their strict liability regime. The shipper is liable even if he has no knowledge of the dangerous nature of the goods or even if he had no means of ascertaining its dangerous nature. It is not necessary to establish negligence on the part of the shipper, as the mere shipment of such goods without giving notice of its dangerous nature establishes the shipper's liability. In the case of a bill of lading, the shipper remains liable even after he transfers the bill of lading to a third party such as a consignee or endorsee. In addition, if neither the shipper nor the carrier is aware of the true nature of the cargo, the court has to decide, which of two innocent parties should bear the risk. The court has decided that the risk should fall on the shipper, as it is the party which should have most knowledge of the cargo. The shipper can only be exonerated from his liability if he is able to prove that the carrier (or a performing party) was aware of the dangerous nature of the goods and he did not take all the necessary measures to avoid the risk; a fact that it is extremely difficult to be proven in practice.

Of course, in addition to the avoidance of the shipper's strict liability regime, there are other reasons for which shippers might resort to hiding the dangerous nature of the goods. They might do so in order to avoid paying the extra rate for the shipment of dangerous goods or avoid any kind of possible delays that might occur in case the carrier refuses to take over the carriage of container due



to unambiguity regarding the safety of its cargo or due to the limitations regarding the quantity of the dangerous cargo that he is allowed to carry on board of the container vessel.

This article aims to highlight the main legal issues, relating to dangerous goods by sea, which are mentioned in both the International Conventions and English law. An overview of the characteristics of dangerous goods by sea as well as the reasons why the people who ship dangerous goods might resort to hide the dangerous nature of them, will be further described. By using the method of comparative legal analysis, the study focuses on discussing the definitions of dangerous goods, the development trends of legislation on dangerous goods transportation by sea, and finally legal relations of shipper and carrier of dangerous goods. Based on the analysis, this study will further contribute to suggest the improvement of the maritime legislation in carriage of dangerous goods by sea.

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Developing Liability Issues in International Air Transportation

Air travel is the safest method of travel. Nevertheless, despite the fact that there are very few accidents, they do happen. Consequently, this area of air law involves loads of complexities, especially taking into account that the terms “accident” and “injury” have no clearly defined legal meanings.

In the last decade, despite the adoption of new standards, European legislation on air carriers’ liability seems to be behind the needs of both passengers and air carriers alike. Undoubtedly, there are huge potential exposures for airlines arising not only from possible individual crash accidents, but also from liability extended through the controversial Regulation (EC) 261/2004. The impressive number of passenger complaints filed for delays and cancellations and the conflicts in these matters, best illustrate the need for evolution in this field of air law.

Although the Regulation (EC) 261/2004 was one of the most successful areas of EU action in the field of consumer protection and has contributed to the regulation of the internal market for aviation services, it has been severely criticized by the aviation industry: the obligations originally mentioned in its provisions, and in particular those subsequently extended by the EU Court of Justice, imposed serious financial burdens on air carriers, and still pose a challenging legal issue in the relationship between EU law and international standards, in particular the Montreal Convention, and its exclusive liability regulation.

By pointing out relevant issues and challenging learning points deriving from several recent cases, the author discusses the legal status of airline liability, touching upon the concept of an “accident” and an “injury”, while drawing

connections between EU and international law. The paper also aims at answering whether consumers in the EU have been given a fair level of protection, or are they “overprotected”, as some airlines often argue.

Given the fact that it is possible to identify several other concerning areas of possible future airline liability, which could potentially lead to claims involving new high costs (e.g. damages caused by air pollutants in air conditioning systems, exposure to harmful radiation), the air carriers can certainly expect turbulent weather in the future.

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Can Interpretative Committees Be Created to Improve Uniform Interpretation of International Transport Conventions?

Uniform law designates all international legal instrument designed to apply identically in different States.

International conventions on private law issues aim to create rules uniformly applicable in the contracting States in order to avoid the disparities of domestic legislation otherwise applied through a conflicts-of-laws mechanism. One of the advantages of such a system is to reduce legal uncertainty and to encourage the development of international trade.

But adopting a uniform set of rules is not efficient if these rules are not applied uniformly by the Courts seized in the different countries parties to these conventions. And yet, there are various examples of diverging applications of international conventions.

The main reason of the existence of divergent interpretations is the lack of an international court having the competence to render binding decisions on issues deriving from uniform conventions. As the creation of such a Court is not likely to happen, other solutions must be considered.

This discussion concerns all uniform conventions but a special attention will be given to transport conventions.

Among the different possible remedies, the creation of interpretative committees must be considered. Some conventions already include provisions. Other legal grounds can be found in the statutes of international transport organizations.

And even if no legal ground can be found, private initiatives such as the CISG Advisory Council can be studied to serve as a model for international transport conventions.

The purpose of this communication is to review the different reasons that can lead to interpretation discrepancies of international transport conventions, but above all to discuss on the potential remedies that may be proposed. Specially, we will discuss about interpretative committees.



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The Electronic Consignment Note (e-CMR): A Reality, Yes, But....

The road sector is an essential component of the digital revolution that we are witnessing.

The international carriage of goods by road is subject to the provisions of Geneva Convention — also called the CMR Convention of 19 May 1956. The creation of international consignment note is compulsory in accordance with the Convention, ratified by fifty countries.

In order to simplify the carriage of goods, an additional Protocol to the CMR Convention concerning the electronic consignment note was adopted on the 20th February 2008. This Protocol permits to replace the paper consignment note with an electronic one.

1/ Reality

Coming into force on the 5th June 2011, this additional Protocol is ratified by 11 countries as of today.

- Bulgaria since 24th September 2010
- Czech Republic since 14th April 2011
- Denmark since 28th June 2013
- Estonia since 2nd November 2016
- France since 5th October 2016
- Latvia since 3rd February 2010
- Lithuania since 7th March 2011
- Netherlands since 7th January 2009
- Slovakia since 21st February 2014
- Spain since 11th May 2011
- Switzerland since 26th January 2009

The e-CMR has two major advantages. In term of cost, the electronic consignment note is an improvement because it removes paper use and permits better and faster organization by accelerating transmission and billing. Also, in term of transparency, the e-CMR has others advantages, such as the real-time information, more accurate data, and automatic transmission data to the company.

The e-CMR becomes reality but is still limited on several aspects. From the geographical and contractual perspective, the use of e-CMR is limited. Moreover, from the data protection and privacy perspective, the e-CMR needs to prove itself.

2/A limited geographical scope

If the e-CMR protocol is in force, it is only applicable between the 11 signatory countries.

Today, an international carriage departing from or arriving to Croatia needs a paper consignment note in the vehicle. Indeed, Croatia, which has only just acceded to the DTS Protocol of 1978 this year, is not a party to the

CMR protocol: this one is not applied to its territory.

Furthermore, the international carriage under e-CMR is possible between two signatories' countries only if it doesn't cross border of a non-signatory country. The road carrier can't cross a country which imposes a paper consignment note in the vehicle. For instance, an international carriage under e-CMR is impossible between Bulgaria and France, or Czech Republic and France, even if each of them is signatory to the Protocol.

In fact, only cross-border transport between two signatories countries are possible (eg Slovakia / Czech Republic or Spain / France), as was the case for the first experimentation in June 2017 between the cities of Huelva in Spain and Perpignan in France (1300 km).

3/ A limited reality on contractual sense

Using e-CMR requires the parties' agreement in the carriage contract with regard the electronic data exchange. It is necessary that parties formalize their relation in writing: they have to accept the use of computer application (specific software or downloadable application) and electronic signature.

Beyond this condition, the e-CMR requires that the national legislation attaches the same legal value to electronic data and electronic signature as is the case with the paper-based and physical signature.

In France, a reform of the Civil Code (Article 1366 and following) regarding evidence established recognition. French law recognizes legal force to electronic writing and signature if the author can be identified and if conservation conditions preserve the integrity of documents.

4/ Data and privacy protection: Limits of e-CMR

The use of innovative technologies of communication and digitization allows three main actions. It permits to perform automatic data entry and to communicate simultaneously such data to the head office of the carrier company. It also permits to gather data with other information from the vehicle (global positioning system and similar). Finally, the communication and digitalization innovative technologies permit to ensure operation's traceability.

Such possibilities must be enabled in accordance with the data and privacy protection rules. These principles are legally established by the virtue of two fundamental European texts:

— Data protection and privacy concerns are legally recognized in the European regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (Regulation EU 2016/79 of 27th April 2016) and repealing Directive 95/46/EC (General Data Protection Regulation).

— Also, the European Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector provides a legal basis for data and privacy protection.

These legislative texts provide key principles which enable



any private individuals to control their personal data.

Particularly, heavy truck driver must expressly accept the use of communication system via satellite to participate in the e-CMR development. The heavy truck driver consent must be free, unambiguous and informed. In this way, it will be necessary to revise employment contract and, in case of need, create an amendment contract specific to this effect.

5/ Reality all the same

The electronic consignment note includes the same information as the paper consignment note. It can be accessible in the form of an application to be downloaded or software linked to the computer program of the transport company.

Several systems have already been developed for this purpose and are in the experimental stage, in particular one by the IRU (International Road Union) (TransFollow) and others by companies (Dashdoc developed by Truckfly in France; Suivo developed By Value Engineers in Belgium).

Whatever the system (software or application), reliability must be ensured through a digitalized, recorded and authenticated signature. The digitalized signature proves that the document has not been altered from the time it was signed by its author, an identified person, and the one where it was consulted and validated by another person also identified.

In this regard, the French Association for Standardization (AFNOR) has published a new standard (NF Z42-026) in May to determine the specifications of digitalizing services in order that the digitalized documents have the same legal value as paper documents.

6 / Operation

After contracting with the customer, the carrier enters the transport information on the dedicated website. Then, the information is available in real time to all the participants who will have obtained an access code and a password to secure application.

The driver equipped with a smartphone or a tablet and, identified by the SIM card of his phone, enters the additional information (dates, times, weight, number of packages and similar). If necessary, he may formulate reservations and takes photos which will be attached to the e-CMR in image or .pdf format. He collects the electronic signature of the consignor by means of a stylus on touch screen or a flashing of the QR code allowing a unique and safe identification. At this moment the information is validated, and can no longer be modified by the consignor and is transmitted in real time on the dedicated computer-based site.

At any time, each stakeholder is privy with regard the progress of the e-CMR, its status, and the monitoring of transport operations. In the case of control on road, the driver can present the e-CMR on the screen of his smartphone or tablet without making a paper print-out.

Upon delivery to the final destination, the driver comple-

tes the e-CMR, as he would do for a paper consignment note, and validates his changing of status (consignee copy) by signing electronically. Then the consignee has all the information in the e-CMR.

After controlling the consignment and before signature, the consignee has the possibility to formulate in turn reservations and to attach photos. A drop-down menu can be proposed to simplify the formulation of the most common reservations. The driver collects the electronic signature of the consignee on screen or by flash code. The e-CMR is then validated by the consignee and the information is submitted simultaneously on the dedicated website.

The delivery is therefore carried out, the dates and times are proved which ends the transport operation and the presumption of the carrier liability.

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Marina Operator's Liability

According to development of nautical tourism, the ports of nautical tourism have developed in short time period in previous decades in Croatia as well as abroad. The specificity of our geographical position has caused very intensive development of the activities of the ports of nautical tourism in a significant extent, and therefore it was not possible to provide legal and scientific contribution in sufficient measure to adequately monitor this state.

In legal, but also in business aspect as well as in logical apprehension, it is not clear what exactly is to consider to be activity of the port of the nautical tourism, and in particular neither theoretical nor practical opinion on material responsibility of ports of nautical tourism are not compatible. The very term of the port of nautical tourism in the official communication often encourages a certain misunderstanding in its interpretation, given that it could be confused with the concept of the marina, which formally is not correct. This is because the ports of nautical tourism are mostly marinas, but according to the formal division they can be anchorages, landfill vessels and "dry" marinas. It is important to emphasize the collision in understanding term of "marina" in formal and practical sense. For better understanding this paper will be directed to liability of marinas. Thereby, it should be noticed that term "marina" has twofold meaning: regardless of the formal determination as one of the ports of nautical tourism it is important to note that marina in business and organizational sense primarily represents — marinas and "dry" marinas. This means that in business sense activities of the marinas in principle are not the same as the activities of the anchorages and landfill vessels. It is possible that in future it will be useful to examine necessity of adjusting formal division and terminology with real division and terminology used in business.

This paper analyses legal questions regarding the liability of nautical tourist ports from the aspect of the marinas as prevailing type of ports of the nautical tourism in general.



The marinas in their composition have large number of different attractive and lucrative elements for all participants. Significance of these questions arise from the fact that systematic formal determination of the rights and obligations of the marinas does not exist. On the other hand, increasing of the scope of economic activities in this area indicates there is significant need of applying legal rules to this matter.

This paper will also analyse what are the all ports that provide service of berthing. Surely, all marinas have that kind of service as their main business activity. However, if we compare number of boats that are registered in RH to number of berth in marinas, we see that most of those boats use berths outside from marinas. Usually, this service is formal and it is lucrative. This issue is important in order to correctly and widely comprehend liability of the marina as one of the provider of the berths.

The current formal regulation does not direct this subject matter of liability of the ports of nautical tourism in any way suitable for taking certain legal opinions. Now there are numerous legal opinions that have been conditioned by a large number of different contractual arrangements, and thus they cause a certain legal uncertainty and inconsistency in the implementation for all relevant entities. In terms of introductory comparasion it can be noted that the rights and obligations of ports are thoroughly and legally determined in a long period, while on the other hand, it is not the case for ports of nautical tourism.

In assessing the liability of the ports of the nautical tourism author will focus his analyze exclusively on the Civil Aspects of the liability not analyzing the question of criminal or misdemeanor liability of the ports of nautical tourism.

Material liability will consider the questions of contractual and non-contractual liability. Thereby the contractual liability determines the complex legal aspect of contractual relationship, which usually extends through the form of general conditions of insurance. On the other hand, non-contractual liability is determined by several factors, where it is not possible to omit the determination of professional rules as the basic criteria for assessing the unlawfulness of the possible failure of the ports of nautical tourism. The rating of this liability requires complex application of different rules that each in certain segments regulate this area. Also, analytical review of our legal framework and comparative solutions will be given. Through this paper some propositions regarding to determination of general terms and conditions and sub-law acts connected with liability of the ports of the nautical tourism will be provided.

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Shipbuilding Contract — A Versatile Legal Framework

The presentation and paper will examine the issue of Guarantee Period regularly present in the standard shipbuilding contract forms, as opposed to the general damage

compensation claim available through the Croatian legislation (continental law tradition).

The shipbuilding process contains a transition from a full to limited, and finally no liability on the side of shipbuilder. In general, during the shipbuilding phase, the shipbuilder retains full responsibility and liability, additionally reinforced by a constant supervision on the side of buyer and classification society. Prior to the vessel delivery, it is necessary to undergo various testing procedures, that are finalized with the final sea trial(s) and class assignment. Successful trails and class assignment usually mark the fulfillment of main shipbuilder's contractual obligations. In practice, after that moment, a significant portion of responsibility and liability for damage is transferred to the buyer, with the shipbuilder significantly limiting its exposure to liability with the Guarantee Period mechanism. The Guarantee Period clause usually sets a one year time bar, and with the expiration of one year, the question is posed on whether the buyer is capable to claim for additional or other damage compensation.

The Guarantee Period sets different obligations for all sides to a contract. The buyer, in general, is under an obligation to exercise due care and attention with regard the vessel's maintenance and expected utilization (as anticipated in the contract). The shipbuilder, in general, during the one year time-frame assumes further responsibility to, if properly notified (up to 30 days from damage) provide replacement for damaged parts of equipment and other parts (allowing for a new Guarantee Period for the replaced parts, up to 18 months from delivery as a time cap), and perform repairs or reimburse the costs of such repairs (in agreement with the buyer). The shipbuilder is not liable for: delay; defects not specified in the Guarantee Period clause; direct or indirect, or consequential damage; and, expenses or loss (including ie: loss of time, loss of profit, loss of earnings, demurrage costs, port costs). With the expiration of one year time bar, it is no longer possible to, in accordance with a contract containing a Guarantee Period clause, enforce further liability compensation. In addition, the Guarantee Period clause usually contains specific wording that places the Guarantee Period mechanism in lieu of any conditions implied by law, statutory obligations or customary obligations. Should the shipbuilder receive any guarantees from various contractors involved in the shipbuilding process, such guarantees are assigned to the buyer after the Guarantee Period has expired.

To test the possible applicability of general damage compensation with the noted Guarantee Period clause, a hypothetical scenario will be analyzed. The shipbuilding phase has been successfully completed, achieved in auspices of constant supervision by all the involved parties, successful individual testing, successful sea trial and class assignment. The shipbuilder has delivered the vessel, the buyer has made the payment, and the vessel has engaged in the anticipated commercial activity. Following several months of uninterrupted operation, the vessel has experienced serious equipment failure (ie, engine or auxiliary engine failure) due to a faulty component. The engine/auxiliary engine has been provided by a producer nomi-



nated by the buyer in the Maker's List, whereas the faulty component (the part that has caused damage to the engine/auxiliary engine) has been provided by a third-party producer (not nominated by the buyer on the Maker's List) to the engine/auxiliary engine producer. The Maker's List is an annex to the shipbuilding contract, and the shipbuilder is under an obligation to procure specified materials and equipment from the nominated producers and providers.

The master of vessel has directed the vessel to a near-by port for repairs, and the buyer (shipowner) has suffered various costs and damage, including: towage costs, repair costs, loss of time, loss of earning and other associated costs (including the crew costs, fuel costs, supplies costs, etc.). As the incident has occurred during the Guarantee Period, the buyer has immediately notified the shipbuilder, who, in turn, dispatched the replacement parts and agreed to compensate certain costs. As the sum of compensated costs does not cover all costs, the buyer now considers pursuing full damage compensation from the shipbuilder.

The Croatian Maritime Code (MC) contains special provisions on the shipbuilding contract (a rare example of shipbuilding contracts being specifically regulated as a *sui generis* contract). In accordance with Art. 430 MC, the shipbuilder is under a general obligation to construct the vessel, and the buyer is under a general obligation to make the payment. Art. 433 MC sets the strict liability standard of performance on the side of shipbuilder (*strict liability principle*), requiring the shipbuilding to be done in accordance with the contract and professional standards. The constructed vessel, therefore, must conform to all requirements necessary for seaworthiness and class assignment. An exception to the strict liability standard (Art. 435 MC) is, however, available if materials and equipment have been ordered from producers or providers nominated by the buyer. In the case of defects on the noted materials or equipment, the shipbuilder's responsibility is presumed (*presumed fault principle*), unless the shipbuilder can prove that the defects could not have been avoided by utilizing the due care (professional diligence in accordance with *lex generalis*, the Obligations Act (OA, Art. 10)). In accordance with Art. 438 MC, all visible (material) defects must be reported prior to vessel delivery, with the shipbuilder retaining liability for such defects. In case of hidden defects (Art. 439 MC), the shipbuilder's liability is time-barred to one year from the delivery (Art. 411 MC).

The pending questions, among others, include the following two issues: (a) with regard the materials and equipment (including the vital components) utilized by the producers nominated by the buyer in the Maker's List, are the third-party producers or such materials and equipment directly responsible to the buyer, producer nominated in the Maker's List, and/or shipbuilder?; and, (b) is the shipbuilder responsible for the nominated (Maker's List) producer's choice of materials and equipment provider (including the vital components) in terms of the quality requirements? To answer these and associated issues, the pending presentation and paper will make a thorough (and, where appropriate, comparative) analysis of the relevant primary (MC) and secondary (OA) legislation

and case law, with a particular focus on the general legal framework (as regulated by OA) of sale and purchase contract, contract of work and product liability, and their possible applicability in the default hypothetical scenario. In addition, the pending analysis will assess other possible issues, based on the default hypothetical scenario, that might arise when utilizing standard shipbuilding contract forms based on English and Welsh law and standard English and Welsh case law, in the continental law tradition, such as is the case of Croatian statutory framework and available case law.

Dr. Adriana Vincenca Padovan

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Arrest of a Yacht in a Croatian Court for the Purpose of Securing a Marina Operator's Claim

The paper deals with the legal complexities related to the possibilities of arrest of yachts in Croatian courts for the purpose of securing the marina operators' claims, such as the claims for the outstanding berthing fees, supplies (electricity, water, fuel), waste disposal, repairs, maintenance and similar marina operator's services supplied to the owners and operators of yachts berthed in the marinas and other nautical tourism ports. The author examines the practice of the commercial courts in Croatia regarding the arrest of yachts and analyses the relevant positive law governing the matters related to the interim measures on yachts and ships for the purpose of securing and eventually enforcing the marina operators' claims. In particular, the author seeks to answer the question whether the marina operators' claims can be treated as maritime claims under the Croatian Maritime Code and/or the International Convention Relating to the Arrest of Sea-Going Ships of

1952 which Croatia is a party to. Furthermore, certain relevance is given to the possibility of subsuming the marina operators' claims under the provisions of the Croatian Maritime Code relating to maritime privileges. In order to examine the correct interpretation of the relevant legislative and conventional provisions the author takes into consideration their background and development, in particular keeping in mind the fact that the provisions on maritime privileges and the arrest of vessels in the Croatian Maritime Code are inspired by the provisions of the International Convention on Maritime Liens and Mortgages 1993 and the Arrest Convention 1952. Through critical analysis of the relevant court practice and the applicable law, the author seeks to make certain *de lege ferenda* proposals reflecting the interest of protecting the marina operator's position as a claimant and considering Croatia's strategic orientation towards nautical tourism.

The subject matter of this research becomes ever more important in the light of the Croatia's orientation towards further development of nautical tourism and the planned increase in the capacity of nautical berths.

Furthermore, it is necessary to look into the related issues





of the governing law and jurisdiction, which additionally complicates the answers to the questions analysed herein.

With a view of a better argumentation and the well based *de lege ferenda* proposals, the author gives a short overview of the relevant legislative solutions found in comparative law, as well as in the 1999 Arrest Convention.

The marina operators' position today receives the general economic importance and it deserves a special interest from different perspectives. This paper focuses on one very narrow and specific aspect of this position. It analyses and wishes to clarify the legal problems that the marina operators encounter when trying to enforce their claims by arresting the vessel in respect of which those claims arose. It is practically the most attractive and potentially most effective manner of their claim enforcement. In relation thereto, it is worrying to see the extent of the legal uncertainty surrounding the subject. This paper tries to contribute to the higher level of legal certainty and especially to the uniformity of the relevant domestic judicial practice.

Prof. María Victoria Petit Lavall

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Fierce or Unfair Competition in the Road Passenger Transport Sector?

In recent years, new internet service providers in the field of road passenger transport such as BlaBlaCar, Uber or Cabify have emerged in many countries, including Spain. These service providers act as intermediaries between users, who are interested in being carried, and drivers, who perform the transport with their own vehicles. Thus, practically anyone who owns a vehicle and is willing to do so, can operate as a carrier across these platforms. Such service providers mainly perform the following functions: they connect drivers and users through their website; they have created specific tools, such as applications for smartphones and tablets, both for drivers and for users; and, although initially the intermediation of some of the providers was apparently free of charge, at a given time they started to centralize payments, which now have to be made through the platforms, and obtain a percentage of the remuneration earned by any one of the drivers.

The professional transport industry has reacted to the emergence of this new source of competition that combines technology, private transportation and a variety of car sharing options, especially because of the latter's lower costs for users compared to those charged by official means of public transport (taxis, buses, etc.).

Admissibility is the main issue at stake when analyzing the new platforms. The arguments adduced against their activities are diverse, but they are mostly grounded on the repression of unfair competition. Indeed, carriage of passengers is subject to strict regulations in virtually any country in the world, and the liberalization process is slow.

Conversely, the new transport service providers and car-drivers are not subject to the legal rules on access to the profession and its exercise that govern the market as of today; and non-professional car drivers do not pay the taxes that do charge professional transport (informal economy).

Service providers (and drivers and users who are associated with them) contested this argument stressing that this is a manifestation of the so-called shared economy or collaborative consumption: they connect private individuals (consumers) who share a vehicle to save costs, giving the vehicles a more efficient use. Furthermore, by reducing the traffic in the cities, the environment does also benefit therefrom. Ultimately it is not possible to foreclose new business opportunities that result in more competition that is fruitful and beneficial to consumers, due to an increased availability of vehicles, the reduction of waiting times, lower prices, better quality and furthering of innovation. It is, however, highly debatable whether we are dealing with a true case of collaborative consumption, where the only aim is to share transport costs among individuals.

The controversy is served. As regards Spain, the Competition and Markets Authority sees value in the liberalization of the sector, although its report on the "New models of service providers and shared economy", published on 11 March 2016, has been heavily criticized by representatives of the regulated sectors. In the meantime, the matter is before the courts: on 9 December 2014, the Commercial Court No. 2 of Madrid ordered the closure of the Uber website as an interim measure and its decision was confirmed in 2015, precisely on grounds of unfair competition. Similarly, several lawsuits are pending against BlaBlaCar and Cabify. It seems, however, that their final destiny is in the hands of the European Union, as the Judge of the Commercial Court No. 2 of Madrid has decided to suspend the trial and raise a preliminary question to the Court of Luxembourg.

Adequate legislative intervention is thus imperative, and it would be desirable to count on a European regulation rather than a national one, since the issue eventually affects basic freedoms, such as the freedom of establishment and that of services.

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Freight Insurance in Charter Parties — Solutions Provided by National Legislation and Institute Clauses

Various interests of shipowners and charterers can be a subject of insurance in transport of cargo by sea, such as material goods (ship, cargo), persons, legal relationships (claims, liabilities, expenditures, costs, responsibility, loss of profit). In charter parties, as a type of contract on transport of goods by sea, shipowner who is an exponent of maritime venture, in addition to many rights and obligations also has a justified material and legal interest in hull and machinery insurance and liability insurance (P&I



risks). In addition to hull and machinery insurance and liability insurance the shipowner also has a material interest in freight insurance. Importance of this type of insurance is special due to the role of the freight, given the fact that the freight is the main economic purpose of charter parties i.e. economic price for exploitation of a ship. Therefore, freight insurance is one of the forms of marine insurance in which the subject is freight insurance exposed to risks from usual marine risks as well as to possible war risks and other risks. During the charter period, the shipowner can be prevented in executing their contractual obligation of transport of cargo and collection of freight for a variety of reasons, and therefore the shipowners have an interest in freight insurance with regard to such risks. Shipowners also have insurable interest when they have well-founded expectations for income from future ship operation. For example, when entering into time charter, there is a possibility that the shipowner will suffer a loss of freight, determined per unit of time, because the ship was out of operation for a certain period of time due to a need to effect repairs of suffered damage, therefore, interest of the shipowners from charter party in freight insurance in logical. By taking this fact into account, we found it necessary to establish basic characteristics of this form of insurance starting from legislative and autonomous legal sources.

Even though a large number of references from the field of maritime would seem to indicate that there is a scientific interest for certain aspects of maritime insurance, a review of research to date shows that the topics dedicated to freight insurance in charter parties are not sufficiently represented. For this reason, we have considered it necessary to carefully investigate relevant legal issues of freight insurance in the subject charter party by encompassing all of its statutory and autonomous legal sources in one place. Therefore, the main goal of this paper is to study and analyse all important legal issues of freight insurance in agreement in principal within Croatian legislative framework, provisions of institute clauses and comparative legal regulations. Issues of current quality of legal regulation of freight insurance and tendency for its future development will be pointed out. For the purpose of achieving this goal, in the introduction of the paper we establish in more detail the Introduction provides basic characteristics of the charter party and principal rights and obligations of this contractual relationship between shipowner and charterer. Then we establish the definition of freight and explanations in respect of which one of the contractual parties has a material interest in freight insurance. Then we define the term freight insurance and features of the material interest in freight insurance existence on the vessel's side and the goods being carried are described severally. Basic ways of insurance interests in relation to the freight, i.e. freight insurance within the insurance of the vessel, or cargo, or concluding a separate contract on freight insurance, are set out, as well as which one is the most common in practice. A detailed analysis of the freight insurance provisions pursuant to the Maritime Code is presented, with a particular stress on the freight loss due to total loss of cargo and determining the amount of compensation from the insurance. Special institute

clauses related to the freight insurance against maritime risks, such as: *Institute Time Clauses — Freight*, 1/10/83 and *Institute Voyage Clauses — Freight*, 1/10/83., also the clauses for the freight insurance against the war and strike risks: *Institute War and Strikes Clauses, Freight — Time*, 1/10/83 and *Institute War and Strikes Clauses, Freight — Voyage*, 1/10/83, are analysed. The Paper also includes the analysis of the institute clauses for vessels' insurance, containing the provisions on freight insurance from 1995. A comparative analysis of the comparative law legal regulations on freight insurance (e.g. *English Marine Insurance Act*, 1906, *Australian Marine Insurance Act*, 1909) is given. In the conclusion the reference is made to the most important provisions of the Maritime Code, institute clauses and comparative law regulations in the standardization of the freight insurance in charter parties, and the quality of the freight insurance valuation is explained from the standpoint of selected legal regulations and institute clauses. Critical review of the quality of legal regulations regarding freight insurance and measures for their further improvement within the provisions of selected laws and institute clauses are also presented.

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Vertical Integration in Railways *Pro et Contra*

Different network industries, including railways, are questioned as whether and in which form the function of managing the network i.e. rail network should be separated from the function of providing the network services i.e. rail transport. What are the benefits of preserving these functions with one entity or dividing them among several entities? In the first case, that is vertical integration of the functions of managing rail infrastructure and providing rail services, it is presumed that a risk of distortion of competition or potential discrimination may arise. In the second case, that is vertical separation of these functions, it is assumed some loss of organisational and operational synergies may happen. The historical operator in railways is regularly a vertically integrated entity consisting of rail network and passengers and freight transport operations. The liberalisation of transport operations should allow free and equal right of access of competitors to rail infrastructure which represents to them an essential facility. Essential facilities are technically not easily replicated nor are financially viable to be built in parallel and are predominantly found in network industries as electronic communications, energy, transport, etc. The rail infrastructure manager active on a neighbouring rail transport markets, may be tempted to foreclose the access to competing undertakings to the essential facility, in order to protect its transport operations. Therefore, competition law and network industries sectoral regulation as well as enforcing public regulatory bodies have a goal to promote equal access to rail infrastructure and rail services necessary to compete for final consumers and clients. Hardly any discussion on railways goes on without touching upon on

its reduced presence and efficiency comparing to other transport modes over the last few decades in EU member states. Therefore in the focus of the railways sector are topics such as financial stability, sustainable financing, labour productivity, etc. Railways may not always be sufficiently attractive to business and passengers end users as a transport mode, they may be state aid depending and its cross-border attractiveness is rather slowly being built by harmonisation of technical standards and setting up of pan European transport corridors. One more objective reason for this historical stagnation lays in the availability of competing land modes of transport like buses, trucks and private cars, and additionally air and water borne transport. A second more subjective reason relates to the transport policy of EU member states in positioning railways vis a vis other transport modes, and the heritage position of the State as owner of the rail infrastructure and transport operators. Briefly, it may be alleged that the railway sector is traditionally seen as economically modestly efficient and as a consequence not competitive from the transport intermodal standpoint. The rail reform predominantly aims at raising funds on the competitive market and not on limited State resources. The structural changes depend on the model of competition available and regulations applied. One can differ competition among vertically integrated rail structures where a source/destination competition in the market exists, form the model of access competition in the market between rail transport operators and finally competition for the market among passenger transport rail operators. The first model of competition, developed in the USA, presupposes competitive parallel rail routes i.e. interchangeability of the same sources and destinations infrastructure. The second model can be found in EU along the liberalisation of rail freight transport. The third model is also found in the EU as a way of developing the passenger rail transport. The role of market regulation of network industries and of railways alike, that have come a long way from state monopoly to free market, is generally to enhance efficiency while guaranteeing availability of service of general economic interest. At the time of *de jure* or *de facto* monopoly in network industries, marked by economies of scale and scope, higher prices or lowered quality may be imposed to the final users. The role of market regulators is to prevent such risks by bringing in new competitors or alternatively impose incentive regulations to the monopolist or the dominant undertakings. At the level of EU it is expected that the common market for rail transportation developing across member states borders will support national structural reforms and revitalise rail transport in face of competing modes of transport. This is achieved by continuous legal harmonisation and technical standardisation of the railway system (interoperability) through several regulatory packages from 2001 onward. Collecting on the aforementioned, this article looks at the *pro et contra* of vertical integration of rail infrastructure managers and rail transport operators, as a mean of developing competition and rail transportation.

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Openness of Croatian Regulatory Framework to Innovations in Passenger Road Transport

Over the last years new and fast growing business models appeared in the world in the area of transport services that have greatly changed traditional approach to road transport of passengers, challenging standard business models through competition by entrepreneurs using innovative business models based on modern technology and sharing economy principles. New business models are not limited to markets where they have initially been developed and have spread, due to their initial business success, over many national and regional markets. Recently, entrepreneurs using modern technology and innovative business models, offering customers transport services significantly differing from routine transport services, appeared in Croatia. Innovative business models of providing transport services at the global level can no longer be considered as a passing trend, and it is quite clear that passengers' road transport has permanently changed, it should be questioned to what extent is Croatian legal system open to adoption of such transport practices. In that sense, it is necessary to analyse legislation regulating passengers' road transport in the Republic of Croatia in order to establish is there *de lege lata* possibility to implement modern transport models into Croatian business environment, are new entrepreneurs overburdened with administrative barriers when entering the transport services market and are regulatory corrections required for modern business models smooth application in Croatia. Basic legal source with respect to passengers' road transport in the Republic of Croatia is the Act on Road Traffic Transport (Official Gazette No. 82/13, further: the Transport Act). The Transport Act regulates, with respect to passengers transport, conditions and manner of performing the activity prescribing conditions for drivers and vehicles, regulating rules on issuing licenses and permits, and defining types of passengers' transport listing special preconditions that an entrepreneur has to fulfill for performance of specific type of transport. The analyses of the Transport Act shows that passengers' road transport in the Republic of Croatia is regulated as closed and rigid system based to the great extent on the public limitations of market competition, in the view different permits and licenses that an entrepreneur has to obtain in order to provide transport services. Transport types defined by the act can, in certain sense, be considered as *numerus clausus* outside of which it is not permitted to perform activity of passengers' road transport. Such closed list of transport types together with the earlier mentioned public limitations additionally burden development of innovative entrepreneurial approach in transport sector. Such legal provisions in essence represent administrative barriers to entry of new entrepreneurs on the market thus significantly aggravating development of market competition.



In addition to burdening entry of new entrepreneurs on the market, provisions of the Transport Act significantly close the market to entrepreneurial innovations, since they force entrepreneurs to develop only those business models that can be categorized as one of transport types envisaged by the law. In this manner, the Croatian market of transport services remains significantly detached from positive effects of implementing innovative transport models on foreign markets. This to the greatest extent represents a loss to consumers as end users of transport services. It is important to stress that the whole sharing economy concept is mainly based on re-regulation of activities that have, until recently, been highly regulated. The request to de-regulate applies not only to issues directly connected to the entrepreneurs' activity but extends also to labor and tax regulations. Innovative models of providing services are based on simplicity and availability to the broadest scope of users, and are impeded by any regulatory intervention. Since protection of public interest necessary entails certain level of regulation, in order to guarantee minimum quality and safety standards for services provided on the market, it is clear that the top challenge in the near future will be to establish ideal ratio between space for entrepreneurs offering new and innovative services to be created by de-regulation, on one side, and regulatory limitations required for protection of public interest, on the other side.

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The Cyber Future of Marine Risk and Insurance

Safety of international shipping vessels is critical to the global economy given that, approximatively 90% of traded goods are transported by international shipping industry. Although the downward trend in shipping losses is encouraging, more challenges however lie ahead. In particular, the cargo shipping industry has witnessed a capacity increase and an increase in the size of ships. The size of vessels augmented drastically over the past fifty years, and increases in vessels' size have become exponential over very limited periods of time due to technological advancements. The increase of vessels' size which finds parallels also in other shipping sectors (ex. ever increasing size of passenger ships), combined with the advent of drone cargo ships at the horizon, pose new challenges to the legal and insurance landscape of the marine industry, especially in consideration of the increased importance of IT and electronics, leading to the necessity of redesigning risk management processes, also in a way to properly weigh the emerging cyber risk elements which are affecting the marine industry. Cyber risks are already present in marine shipping and transportation with navigation having become ever more reliant on electronic navigation tools and interconnectivity. Presently, it is possible to notice over-reliance on technology (ex. navigation), training of crews not uniform in all countries and minimum manning levels on board, all elements that, in an even more advanced IT

environment, will make, for instance, hackers' lives easier when attempting to compromise a vessel. In this regard, an increasing number of malicious jamming of GPS signals in some seas has been reported. Such are called spoofing attacks, i.e. a type of cyber-attack which could lead a vessel off course and result in a grounding, collision or similar serious marine incident. Pirates are using the internet to track vessels, the web being possibly their biggest strategic asset. However, it is not only pirates who may illegally access IT networks of shipping companies, GPS and AIS systems, that may be falsely updated by hackers. The navigation system is just one element of an integrated, complex information process which can also be directly accessed. The firewalls on-board ships are often not able to provide adequate protection given that vulnerability is due to the necessity of the different systems to communicate with each other. In fact, with so many different suppliers of the different components of the systems (ex. radars, GPS, AIS, etc.), open communication is necessary for their joint operation. The flexibility inherent to the systems' components allowing for their communication with components from other manufacturers leaves obvious security gaps which are the targets of hackers. Many categories of wrongdoers may be interested in such assets. The consequences of such acts may give rise to theft of data or cargo, extortion, property damage coupled with bodily injury and at times even loss of life, not excluding catastrophes, even environmental ones (ex. the grounding of a liquid gas container ship). These developments have also affected ports. In 2013, in the Port of Antwerp, a drug smuggling organization hacked the tracking system of goods. In 2014, in a primary US Port, all cranes were simultaneously shut down during loading / unloading operations by an unidentified intruder in their IT systems. Inadequate cyber protection is a relatively new threat compared with traditional perils. However, cyber risk is regarded by many as the major issue for the shipping industry going forward, particularly given that it is not inconceivable that an attack could ultimately result in the loss of vessels. In 2012, the European Network and Information Security Agency issued an Analysis of Cyber Security Aspects in the Maritime Sector, emphasizing that "the awareness on cyber security needs and challenges in the maritime sector is currently low to non-existent ...". Improvements since then are difficult to evaluate and quantify. To date, lack of robust cyber security is identified in the Allianz Risk Barometer (2015) as "... a significant threat to future shipping safety ...". It is evident how the marine sector is becoming increasingly vulnerable to massive attacks in an environment in which the human factor is becoming less and less important with crews becoming smaller, ships becoming larger and more complex, coupled with growing reliance on automation by crews lacking uniform training across countries. Clearly, such factors favoring attacks is the result of a highly competitive environment in which cost cutting (smaller and sometimes poorly paid crews) and scaling of services (gigantic ships effectively managed by IT systems) is key for survival. Technology's advancements are leading the way to a future in which ships will be unmanned. In 2015, a Finnish ship designer presented an unmanned and zero-im-



pact cruise ship capable of transporting almost 600 passengers. Many other prototypes of drone cargo carriers have also seen their debut in the recent past. In one of their most popular systems configurations, drone ships are governed by a so-called Integrated Bridge System (IBS) having direct control over an Engine Automation System (EAS), an Autonomous Ship Controller (ASC) and an Advanced Sensor Module (ASM). The EAS controls the AEMC or Autonomous Engine Monitoring and Control, the ASM instead communicates with the dedicated LOS communicators (AIS, VDES, GMDSS). The drone ship's systems as described above, are interfaced via a Communications Controller to the SCC or Shore Control Centre which encompasses Shore Engine Control, Remote Fine Navigation and Shore Bridge Controls. The SCC and IBS then communicate with other ships and shore systems. The implications of the cyber risks involved in the control and navigation of unmanned drone ships is evident and would not require lengthy argumentation. The International Maritime Organization (IMO) in its Interim guidelines on maritime cyber risk management acknowledged the dangers posed by cyber-risks to the marine industry and asked that the "... Stakeholders should take the necessary steps to safeguard shipping from current and emerging threats and vulnerabilities related to digitization, integration and automation of processes and systems in shipping...". With the aforementioned document, the IMO has therefore attempted to provide interim guidelines on maritime cyber-risk management. By cyber risk management the IMO intends to outline a process for identifying, analyzing, assessing, and communicating cyber-related risks and accepting, avoiding, transferring, or mitigating them, considering costs and benefits of actions taken to stakeholders. In particular, the goal of maritime cyber risk management is to support safe and secure shipping. Very interestingly, in terms of risk management processes, the IMO distinguishes between information technology systems focusing on data as information and operational technology systems using such data to control or monitor physical processes. The risks mostly arise from the exchange of information and communication protocols.

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Does the Shipping Industry Need a Maritime Protocol to the Cape Town Convention?

The UNIDROIT Convention on International interests in mobile equipment, signed on 16 November 2001 (commonly known as Cape Town Convention, CTC), along with the Protocols about particular assets encumbered with consensual security interests (airframes, aircraft engines and helicopters; railway rolling stock; and space assets, so far), has presented itself as one of most successful international instrument in the international scene of the uniform private law. The difficulties that such a topic involves (not only those arising from to the elaboration of an international text, but also specifically the ones related

to the attempt to unify principles between very different legal systems in the topic of security interest and property law) have been overcome by the wide consensus that the Convention is successful. Currently, it counts more than 72 Contracting States; a considerable part of them are developing countries (evident sign of the sensibility that this text has shown to certain jurisdictions).

Given this huge success (especially the one shown by the Aircraft Protocol, having in mind that the same fortune is foreseen for the rest), a scholar of Maritime Law cannot stop asking the following questions: Would a Maritime Protocol be a good idea? Does the shipping industry need a maritime protocol to the Cape Town Convention? Despite the particularities of the sector (vid. single-ship's companies, flags of convenience or open registers, bareboat or demise charter and the registration of the vessel in other state for the duration of a bareboat, among others), the huge value of asset (ship), the constant need of financing for its acquisition or construction, the international mobility of ships or the necessary protection of secured creditor, do not differ excessively from the reasons why its adoption for the aircraft sector has been a solid success.

In the beginning of its elaboration, the drafters of the Cape Town Convention wondered if the ship would be a susceptible asset of being associated to the Convention. The answer of the shipping-related international Institutions (IMO, CMI and UNCTAD) was categorical: No, thank you. The arguments for such rejection were short: [a] it was feared lest the inclusion of registered ships in an international Convention of a general nature might prove to be source of conflict with the newly drafted Maritime Liens and Mortgages Convention (adopted by the 1993 Geneva Conference) and cause confusion and uncertainty (an answer of certain strength); [b] the preparation of international rules governing ships and shipping was described as an issue that was traditionally the preserve of specific international organizations with full participation of shipping circles. To sum up, quoting Professor Roy Gode, ships were excluded because of a perception (probably a misconception) that these were already catered for by existing Conventions, though in respect of consensual security interests all of these were confined to rules of recognition and none of them has been very successful.

More than 20 years later, and especially before the low acceptance that the Convention on Maritime Liens and Mortgages (1993) has had (with only 17 Contracting States), maybe now is the time to ask ourselves the same question: Is a Shipping Protocol possible?

The purpose of this presentation has the following objectives: [a] to examine the main problems, both legal and practical that this new instrument would face in the field of Maritime Law, (e.g. particularities of the shipping industry and its financial counterpart — the financial institutions — relationship and conflicts with other Conventions, international maritime liens v. non-consensual rights or interests); [b] to analyze the problems that it would have to overcome in the field of consensual security interests (especially in concerning to the creation, validity, priority rules, recognition and enforcement, all of these issues of a marked do-



mestic legal nature); [c] whether the dual structure model (Convention & Protocol) and the flexibility of the text (reservations and declarations) will solve the main problems that the financial industry is facing.

It will be interesting to make a quick review of the intent of the Convention and the proposed solutions for the aircraft sector, establishing primacy as regards matters within its scope relating to the creation, enforcement, perfection and priority of interests in aircraft (establishing a new international framework — functional approach to the security interests through the recognition of an generic International Interest — providing for the creation of an International Registry or the regulation of default remedies, among others), to finally conclude, as far as possible, if the Convention on International interests in mobile equipment (along with a possible maritime Protocol) is the ideal mechanism to regulate the main problems that ballast the Conventions on Maritime Liens and Mortgages (both 1926 and 1993).

As succinctly put by Professor Roy Goode, the questions to be asked when considering the drafting of a new Protocol are: Can the shipping industry be persuaded to see the prospect of shipping and shipping finance securing benefits from the Convention, with a shipping protocol, similar to those by the other sectors mentioned? And, is the project likely to receive a substantial measure of support not only from industry but also from governments and other interested sectors?

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Securing Financing and Lease of Aircraft in Croatia in the Light of Cape Town Convention

Adoption of the Cape Town Convention on International Interests in Mobile Equipment in 2001, together with the Aircraft Protocol, created a new international framework for financing and leasing of aircraft. This complex international instrument that introduces a novel approach to establishing and registering international interests in aircraft objects has now been offered to countries that need to recognize it and embrace it. Although aviation industry is global in so many ways, national practices and laws regulating proprietary and obligation rights in this area (and their conflict of law rules) are still diverse, which poses costs and legal insecurity for aircraft owners and financiers all over the world.

Regardless of reticent importance of Croatian aviation sector in global terms, and having a rather modest number of aviation transactions in Croatia, regulatory framework and local practices of purchase and lease, as well as financing and collateralisation are constantly developing. Due to the distinctly international character of aircraft industry, legal structures of aircraft finance and

aircraft lease used in Croatia, are very similar to ones used in rest of the world. However, Croatian legal framework, especially in relation to rights *in rem* and creation of securities has its own peculiarities that rest on the “old” system of Geneva Convention.

Although Croatia has not yet ratified the Cape Town Convention, growth of the importance of this instrument for international aircraft (and aviation) industry, together with its solutions which are becoming globally accepted, accounts for a need to settle the scene in Croatian legal system as well.

Having in mind the complexity of the Cape Town Convention and its economic and legal implicacies, this paper aims to detangle existing legal and practical issues related to securing aircraft finance and lease in Croatia, as well as to give a precise analysis of its legal regulation. Therefore, in our paper we will give an overview of typical manners of securing claims, such as hypothecation (mortgage), assignment of claims from the lease agreement and pledge over movables (in case when only parts of the aircraft and not the entire aircraft, are pledged) in Croatian legal system, followed by an analysis of the most important principles and newly introduced instruments of the Cape Town Convention in relation to it. In this context, this paper aims at clearing out issues of legal nature, especially in cases when holders of proprietary rights on aircraft and aircraft parts are not the same persons, and tackle potential obstacles for implementation of Cape Town Convention in Croatia.

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Danger of Carrier Fraud and Measures for Their Prevention

For some time now, the transport industry has been the target of criminals who randomly choose the drivers to follow and rob, but also the target of well-organized criminal groups using much more sophisticated ways to steal cargo.

Supply chain operators take a number of measures to prevent unlawful thieving of the cargo, whereby the chains of organized crime become more and more inventive and more successful in finding a way to unlawfully steal cargo. Additional incentive is given because of the fact that the authorities of criminal prosecution do not pay enough attention to this issue. There are several causes for this state, and one of them is certainly the fact that these crimes are occurring in an international context, with police authorities from multiple involved states having difficulties in cooperation due to a series of complex formal procedures and the need to harmonize their actions.

The inactivity of the authorities in the fight against organized crime prompted supply chain participants to organize themselves in local and international associations in order to tackle problems and prosecute perpetrators. Unfortunately, the passivity of police bodies has led to further



growth in crime. One such association is TAPA (Transport Assets Protection Association), which follows this area, at least in terms of collecting, processing and exchanging data and preparing preventive measures.

Modern ways of business cooperation through online freight exchange enable the meeting of supply and demand in the field of transport services, with up to 500,000 realized contracts per day. However, the job is often negotiated with unknown (suspect) partners.

The online freight exchange for carriers provides direct cooperation between carriers and clients without intermediaries, flexible operations, filling empty and return transports and filling capacity in half empty trucks, expanding business relationships and achieving more competitive transport conditions for shippers. Unfortunately, business over the freight exchange also has negative consequences, such as collaborating with partners we do not know and whose references are unknown, or what to do when the service is not paid. This is also exploited by criminal groups that, under the guise of legitimate carriers, can easily obtain material benefit. The modern way of doing business allows criminals to steal cargo while not even coming near it. At the same time it raises the issue of the responsibility of the manager of the online freight exchange, as well as choosing the measures to be taken to prevent criminal activity.

Business through an online freight exchange should be handled with great caution, as warned by the International Road Transport Union (IRU) in its 2013 Guide to the Safe Use of Internet Freight Exchange. The instructions also include an analysis of the situation in terms of on-line transportation and analysis of business opportunities, future challenges for the safe use of the freight exchange and instructions for preventing the illegal activity of criminals.

Historically, the *modus operandi* of criminals changed, but today we are already talking about the third generation of fraud, with each new generation being even more dangerous than the former. The inactivity of the police and other authorities in charge of criminal persecution has strengthened criminal structures who build their network and activities on the considerable earnings from sales of the looted cargo, which is a huge threat to the entire supply chain. Carriers, pressured by their own responsibility for the missing cargo, seek appropriate solutions, including insurance, among others.

Initially, on the online freight exchange, criminal groups would use companies — firms that were no longer doing business, but whose owners haven't deleted them from the registry of companies, to enter into a cargo contract with a buyer or client, after which their drivers and trucks would pick up the client's cargo and disappear with it. This practice was quickly discovered, and that company would be put on the freight exchange's so-called black list. However, criminals would continue to use other existing but inactive companies for the same purpose. Owners of the missing cargo who didn't have cargo insurance would not receive any damages for it because no one would respond to their compensation request addressed to the carrier.

This alarmed the carriers who made contracts through the

online freight exchange as well as the freight exchange managers who ultimately introduced additional precautions for the online freight exchange users. The managers sought documents, proof of a transport license, insurance from their partners, and tried to check the company itself.

Criminals have then concluded cargo contracts through the online freight exchange for which they hired existing, "clean" carriers, from whom they requested documentation, which they proposed to the contract partners. During the verification, it was established that all the documents were correct, trust was obtained and a transport contract with the customer was agreed through the website.

The criminal owned company subcontracted the cargo business to an existing carrier, changing the final destination for unloading in the delivery order. At the same time, the criminals prevented the carrier and his driver from communicating with the representatives of the sender under the threat of a penalty amounted to three times the fare. That cargo ended up at a completely different point of unloading than the one contracted by the cargo carrier, and then quickly disappeared from those locations (which was shown later during police investigations).

The transport contractor (shipper) filed an indemnity claim against the carrier, as the cargo didn't arrive at the destination, as agreed in the carriage contract concluded by the transport contractor via the online freight exchange. The carrier proved that he had fulfilled the transport subcontract concluded with the main carrier and was not responsible for the delivery failure. The client remained without compensation, because he made the arrangement with the carrier — criminal, because he wasn't careful enough when checking his partner.

A variation on the same subject happens when a carrier, after agreeing on a cargo contract with the transport contractor, has subcontracted the job — either online or otherwise. The risk here is that because of the hurry, he will not check the carrier thoroughly enough and give him the order to load the cargo.

During the transport, constant communication between the partners gives the impression that everything is in order. Then everything comes to a slight delay due to certain "objective reasons"; it looks like everything is going well until the recipient of the cargo raises the question of the location of the cargo. The communication with the carrier then ceases, no one replies to e-mail and the mobile phone number is disconnected. Who pays the damages for the missing cargo? The carrier who arranged the transport and hired the "partner" who conducted the transport? Is there a possibility of lawsuits against the thief and his insurer?

In the third generation of fraud, it is even more difficult to detect or prevent the cargo from coming into the hands of criminal groups in a timely manner. Criminals have accumulated capital during their successful years, which is being invested in smaller transport companies that have a long history of work in this area. In such manner, they are just waiting a favorable opportunity — a job that will bring them a vast amount of earnings — cargo that can



be sold on the market because of its high value. The last generation has other manifestations and means of crime — getting information about the cargo through blackmailing the contractor's / carriers' workers, placing spies in the company, etc.

Awareness and powerlessness of the supply chain stakeholders led to stakeholders led to the formation of private associations, most notably TAPA EMEA, established in 1996. The main task of TAPA is to collect information on the number and types of illegal seizing of cargo, warning logistic managers and drivers about the "dangerous corridors", organizing conferences and exchanging knowledge and experiences on measures to stop criminal activities, forming different security standards and carrying out certification procedures. Additionally, TAPA warns the expert and political public on this subject and represents interests of the supply chain stakeholders in front of the decision-makers.

What measures does the EU have to take to reduce crime and what measures should be taken by individual Member States, or online freight exchange managers, insurers and members of the supply chain; and what is the responsibility of each individual participant? These questions should be answered, because the challenge which the carriers are facing is enormous.

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Are There Any Elements of the Contract of Custody in the Marina Operators' Contracts of Berth?

The contracts of marina operators' services, mainly the contracts of berth, but also those including the custody of pleasure craft, their maintenance and repair, are not regulated by any special legal provisions. These are atypical innominate contracts created through the marina operators' business practice. The respective contract terms are usually prepared and proposed by the provider of the service of berth, i.e. the marina operator. The practice of concluding the contract and defining its scope and contents relies on the use of the marina operators' general terms of business. The title "contract of berth" frequently entails various contents, legal nature, scope of the parties' obligations, extent of contractual liabilities. The preliminary analysis shows that the marina operators' general terms and conditions are not uniform and standardised, and that the central problem of this matter is the lack of precision in the wordings and their frequent ambiguity.

Subsequently, the relevant judicial practice is unconsolidated, which altogether leads to legal uncertainty. It is noted that the domestic courts do not seem to recognize the fact that the marina operators provide various ranges of services under their contracts of berth.

Namely, these contracts can vary from the simple providing of the nautical berth to a complex combination of services that besides the berth itself include e.g. the custody of the vessel, its maintenance, repair, or similar. In addition, the legal framework applicable to these contracts is rather complex, as it includes the general provisions of the law of obligations and contracts, as well as the special provisions regulating those types of contracts whose elements may be contained in the respective contracts of berth, such as the provisions of the Obligations Act regulating the contracts of custody, rent, mandate, consumer contracts. As regards the maintenance and repair of the vessel, the provisions of the Croatian Maritime Code would be relevant, as *lex specialis* applicable to the respective segment of the contract. The Consumers' Protection Act should also be kept in mind. One of the most important issues that arises in practice is whether the marina operator is liable as a custodian for the vessel on berth, and if so in which particular cases. The answer to that question requires a discussion on the contents of the contract of berth. The focus is on the so called permanent berth, as opposed to the transit berth. The main subject of analysis are the marina operators' general terms of business. The question that must be answered is when and to what extent should the provisions of the Croatian Obligations Act relating to the contract of custody apply to the contract of berth in a marina. In practice, the parties may agree to apply the provisions on custody, expressly exclude the application of such provisions, or the contract may not even mention the custody, whilst at the same time include certain obligations that by its content represent the elements of the contract of custody. The authors analyse the legal consequences of the respective contractual dispositions.

A developed nautical tourism market requires a balanced protection of interests of the stakeholders, in this context those are the marina operators and the owners or operators of the vessels. Such challenge is particularly reflected in the segment of the civil liability for damage under the contract of berth including the elements of custody of the vessel. In such contracts the extent of the marina operator's liability for damage to the vessel on berth is much higher than in the case when the contract is merely for providing a nautical berth. Namely, the marina operator, under the contract of berth that contains the elements of custody, in addition to the liability for the suitability and propriety of the nautical berth itself, undertakes to take care of the vessel. The questions that arise in connection therewith require the prior understanding and knowledge of the marina operators' economic role and the features of their entire professional activity. On the other hand, the fact that the financial values of the vessels berthed in the marinas are relatively high, logically reflects on the contractual expectations of the vessel owners and operators calling for a suitable legal protection of their material interests. Legal certainty is therefore, as in any other business, a decisive factor for both contractual parties relying on the predictability of their mutual legal expectations.

The authors thoroughly analyse the contracts of berth containing the elements of custody as used in the practice of the Croatian marina operators. For a better understand-



ding of the complexity of the legal relationships arising from these contracts, the special consideration is devoted to the legal nature of this type of contract. The paper studies the features and the contents of the contract of berth with the elements of custody. A detailed analyses and interpretation of the relevant provisions of the marina operators' general terms and conditions is provided as well as of the legal framework within which this type of contract functions. The subject matter of the analysis is also the judicial practice entailing the cases of damage to or the loss of the vessels berthed in the marinas. The rights and obligations of the parties to the contract of berth with the elements of custody are thoroughly studied. The authors explain the meaning and the extent of the obligation to take care of the vessel and they interpret the standard of due diligence in this context analysing the consequences of the marina operator's default in exercising that duty. It is also important to define the moment when the specific contractual obligations commence and end. The paper further deals with the duties of the vessel owner or operator as the client. A special question is to define the subject of custody, particularly whether the reserves of food, drinks, inventory and equipment of the vessel should also be considered a subject of custody.

The main theses of this paper is that the qualification of the legal nature of the contract of berth and the choice of the relevant substantive law to be applied to the contract is closely linked with the precisely and exactly determined contents and cause of the contract, which necessarily entails a correct interpretation of the marina operator's general terms and conditions on the basis of which the contract was concluded.

It is submitted that the improvement of the legal framework applying to the marina operators' contracts of berth, including in particular those with the elements of custody, should be directed towards the standardisation of the marina operators' general terms of business and the creation of the set of models of the standard general terms of business for the Croatian nautical ports. This paper should serve as a basis for the creation of such general terms of contract containing the basic elements of the contract of berth and the custody of the vessel.

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Code-Sharing Agreements and Competition Protection in the European Union

The reason for writing this paper is the recent announcement of the European Commission, formulated in so-called Statement of Objections by which it has been determined that two airline companies — Brussels Airlines and TAP Air Portugal — breached the provisions of the Article 101 of the Treaty on Functioning of the European Union by concluding the "code-sharing" agreement. The decision in questions is a result of the long-lasting

investigation in the case AT.39860 initiated with the dawn raid investigation carried out by European Commission on December 13th, 2011 in the business premises of Brussels Airlines and TAP Air Portugal in Belgium and Portugal.

The Statement of Objections has first been published in a press release on web pages of the European Commission, dated October 27th, 2016.

However, simultaneously with the announcement on the Statement of Objections determining the breach of the competition law, the European Commission has announced the completion of the investigation in the case AT.39794 also concerning two airline companies — this time Turkish Airlines and Lufthansa — which also concluded code-sharing agreements. European Commission in this case assessed that there are no elements indicating the breach of the competition law and creation of a cartel between the undertakings.

Thereby, the European Commission ended one part of a long-lasting investigation of code-sharing practice concerning big European airline companies and has set up certain criteria for assessing the anti-competitive effects of such agreements. This also raises certain questions — will the mentioned criteria be sufficiently clear and stable to become a direction for assessment of similar agreements in future, or will the practice in this sense change and will this criteria "withstand" the assessment of the Court of the European Union, in case the undertakings oppose the Statement of Objections and request Court's intervention (under the condition that the European Commission assumes the same stance in its final decision).

Cartel issue, the issue of price harmonization and other forbidden practices which are covered by Article 101 of the Treaty on Functioning of the European Union, are thoroughly elaborated through the practice of the Court of the European Union. However, the development of the industry is followed by fast development of new types of agreements and legal solutions by which the undertakings pursue their interest and adapt to the market in the best possible way. Such development of the agreements requires constant engagement of the authorities tasked with the market competition protection as they must assess new legal solutions and their compatibility with the market competition regulations, or more specifically they have to assess whether such new agreement represent an attempt to circumvent the market competition regulations.

Code-sharing agreements are not a recent phenomenon on the world market. Such agreements occurred on the American market in late sixties of the previous century, after which they spread to European markets. The development of the market competition law took a real momentum only at the end of the previous century and code-sharing agreements have been occasionally mentioned, but never thoroughly analyzed.

By analysing the market competition law and its reach in the transport sector, there is an impression that most of the decisions have been issued in the air passenger transport sector. In this sense, there are several significant decisions in the concentration compatibility assessments of large



undertakings in the transport sector, such as in cases of British Airways & Iberia (Case No. M.5747), United Airlines & Continental (Case No. M.5889) or US Airways & American Airlines (Case No. M.6607). A captivating example includes the concentration of Aegean Airways & Olympic Air (Case No. M.6796) which practically created a monopoly in the air passenger transport in Athens airport — concentration has been firstly declared as incompatible, but, after the second application, European Commission decided not to oppose the concentration on the grounds of deteriorating economic situation in Greece, due to economic crisis.

Apart from these decisions, there is a whole set of extremely important decisions in other aspects of the competition law — as the decision of the Court of the European Union in assessment of permitted rebates (C-95/04 British Airways c/ European Commission).

Having in mind relatively low number of decision issued in the transport sector relating to the market competition, it is highly likely that the authorities tasked with the protection of the market competition shall more and more intervene in that sector as well and they will use more sophisticated methods of analysis. Despite the mentioned, it remains unclear what exactly constitutes a breach of competition law in case of code-sharing agreements and the paper is aimed at identification of several key factors marked as the most important for the competition law analysis related to code-sharing agreements. Therefore, due to the wide-spread use of code-sharing agreements, it would be recommendable to set clear criteria for assessment of such agreements and provide enough time for adaptation of the undertakings.

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On the Regulatory Models for Introduction of the Electronic Bills of Lading in Croatian Law

The analysis of the provisions of Croatian Maritime Code suggests that current Croatian maritime law doesn't regulate the possibility of issuing electronic bills of lading. In that sense, it seems that the bill of lading as a negotiable document of title remains inseparably linked to the traditional paper-based document.

The paper analyzes the current regulatory framework for the bills of lading in Croatia, provided by the Maritime Code and the Obligations Act. The arguments confirming the thesis that Croatian law does not provide the institute of Electronic bill of lading are disclosed. It is further discussed whether the Croatian law allows the possibility of issuing electronic bills of lading under the principle of freedom of contract. Additionally, the paper analyzes the legal solutions regarding electronic bills of lading in comparative law, particularly in the United States and South Korea. In that term the various legislative approaches are revealed. Further, possible models of introduction of electronic

bill of lading into the Croatian law are discussed. In this regard, consideration is given to the possibility of redefining the concept of document of title and bill of lading by introduction of technologically neutral terminology. On the other hand the introduction of the electronic equivalents for document of title and bill of lading in compliance with the existing provision of Article 1135, paragraph 2 of the Obligations Act is considered. Paper also discusses the necessary legislative interventions in the case of both aforementioned approaches. Finally, the assessment of the most appropriate legal approach for the introduction of electronic bill of lading into Croatian law is given.

The aim of the paper is to discuss the possibilities of modernizing Croatian maritime law in the context of progressive technological upturn and the latest legislative developments in the comparative legal systems in order to give concrete legislative proposals regarding the introduction of electronic bills of lading to Croatian law *de lege ferenda*.

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Ship Acquisition, Pre-Delivery and Post-Delivery Finance

Not many forms of transport have such specific features of asset finance like shipping. The main reason being the substantial amounts of money involved (often tens and hundreds of millions of US Dollars or Euros); shipping industry is very sensitive to global trade, financial and political changes in the world; ships are elusive and trade between various jurisdictions and subject to various legal systems; loan documentation, as well as documentation relating to carriage of goods and passengers by sea, is governed by different laws; sea transport is regulated by a number of international conventions and regulations imposed by relevant states and regulatory bodies.

1. Pre-delivery ship acquisition finance

(i) Who is the borrower?

The borrower is (since the second part of 19th century), more often than not, a limited liability company incorporated with the purpose of acquiring a ship for commercial use (also known as "special purpose vehicle"). The borrower is often incorporated in a jurisdiction that is different from the jurisdiction of its members/shareholders and which has legal and tax regime not only attractive to the shipping investors but also safe enough and acceptable for the banks prepared to provide finance it and keep such a borrower in their books as "acceptable risk".

The most acceptable risk for the banks is the fact that their newly incorporated borrower does not have any liabilities to third parties (save for fiscal duties towards the state of its incorporation) or any assets (e.g. a ship) which could create liabilities to third parties (e.g. maritime claims). At the time of the loan the only asset of the borrower/buyer of a new ship (in addition to its share capital) are its rights un-



der a shipbuilding contract made with a shipyard acceptable for the bank.

II. Shipbuilding contract

Pursuant to English law (English law is the most common governing law for international shipbuilding contracts chosen by the contract parties) a shipbuilding contract is an agreement for the construction and sale of a ship by description. More specifically it is an agreement for sale of future rather than existing goods, like a building contract.

Pursuant to a shipbuilding contract the fundamental right of the buyer is to demand that the ship that complies with the contract and its specifications is constructed for and delivered to him on a contractual delivery, and, if the shipyard fails to do so, to claim refund of all installments paid to the shipyard in advance of the contract price.

III. Shipbuilding (pre-delivery) financing

It is common that under a shipbuilding contract the contract price is payable in a number of installments (often 4 or 5 installments), the last and the biggest installment payable on the ship's delivery. The biggest portion of the contract price is not paid the buyer is not paying from its own capital but from the moneys borrowed from the bank.

In order to make decision to provide such financing the bank must be capable to evaluate the risks that might jeopardize the repayment of the loan. At that stage the highest risk for the bank is the risk if the shipyard fails to perform the shipbuilding contract. However, the banks providing ship finance are normally well equipped with knowledge, experience and technology required for evaluation of such risks.

Since the only assets of the borrower/buyer under the shipbuilding contract are its rights under the shipbuilding contract, it is extremely important for every bank that such rights are well established, valid and, at any time, enforceable.

IV. Securities

One of the conditions for utilization of the loan is providing securities satisfactory to the bank.

In addition to corporate securities (such as pledge of the borrower's shares, corporate guarantees given by the borrower's shareholders), financial securities (such as pledge over the borrower's bank accounts) and payment instruments (such as bills of exchange, debentures), the most common security is an assignment of the borrower's rights under the shipbuilding contract and the refund guarantee provided issued by the shipyard's bank.

Although in certain shipbuilding countries (like Croatia) a mortgage over the ship under construction is available, it is not common that the buyer grants a mortgage over the newbuilding simply because most commonly it is the shipyard, not the buyer, who owns the ship under construction.

Assignment of the newbuilding insurances is an optional form of security for the bank but requires very detailed analysis.

V. Loan facility agreements and securities

Governing law in most of ship finance documentation is English law and the chosen forum for settling any disputes arising thereunder is either jurisdiction of English courts or London arbitration.

Certain essential provisions of each loan facility agreement include definitions and interpretations, borrower's representations and warranties, the facility availability period, the purpose of the loan, repayment of the loan, interest, flag of the ship, termination provisions, insufficient payments, increased costs of the facility, provision of the borrower's corporate documents, payment of the borrower's share capital, borrower's covenants, no distribution of profit, events of the borrower's default, conditions precedent for utilization of the facility such as execution and registration of the securities, law and jurisdiction.

Certain securities are pure contractual covenants and without creating any property rights, and some are creating property rights over the borrower's or the borrower's shareholders' assets and are subject to proper registration in special registries.

Governing law of the securities created by an agreement, such as assignments for security purposes, is the same as the governing law of the underlying contract. Hence the assignment of the shipbuilding contract shall be governed by English law, while an assignment of the refund guarantee issued by a Croatian bank under Croatian law shall be governed by Croatian law.

The governing law of the securities creating property rights over certain assets, such as mortgages and pledges, shall be the law of the country where such assets are situated or registered. For example, governing law of a mortgage over the newbuilding registered in the Croatian Registry of Ships Under Construction shall be Croatian law.

Certain legal issues that will be analysed in this, first part of my presentation:

Borrower's corporate and fiscal matters

Legal issues related to refund guarantees, and

Validity and enforceability of each of the loan securities from the governing law point of view.

2. Post-delivery ship acquisition finance

1. Title over the vessel

Subject to terms of the shipbuilding contract the buyer purchases the ship from the shipyard and acquires the title over the ship upon payment of the contract price and upon ship's delivery to and acceptance by the buyer.

The transfer of title over the ship is evidenced by execution of a protocol of delivery and acceptance of the ship, the shipyard's bill of sale, deletion of the ship from the Registry of Ships Under Construction and entry of the ship into a Register of Seagoing Vessels (defined in the shipbuilding contract) in the name of the buyer, providing the class certificate for the ship has been issued.

Upon the above evidence has been provided the buyer of



the newbuilding shall become the owner of the seagoing ship.

II Finance and securities

On delivery of the ship the bank disburses the biggest amount of the loan in order to finance the payment of the delivery instalment of the contract price, returns the refund guarantee back to the shipyard and instead takes new and different securities for the loan, takes the borrower's risk instead of the shipyard's risk, and the risk of ship's employment and the shipping market in general, together with all other related risks, the risk of the ship's insurance, etc.

Usual securities taken by the bank at that stage include a mortgage over the ship and assignment of all ship's earnings and insurances.

Certain legal issues that will be analysed in this, second part of my presentation:

Legal aspects of ship acquisition;

Legal relationship among the parties involved in transfer of title over a ship;

Legal aspects of the ship's flag affecting the validity and enforceability of the loan securities;

Statutory regulations v. contractual provisions of the loan securities.

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Insurance Act 2015 — What's In There for Marine Community?

Insurance Act 2015 is a result of at least 30 years of discussions and proposals how to modernize a 100-years old Marine Insurance Act 1906. Although the Marine Insurance Act 1906 enabled codification of (marine) insurance principles developed by Judiciary, its role gets weaker due to digitalization processes, improvements in best insurance practice and rise of awareness of consumer (assured) protection rights.

Insurance Act 2015 represents probably the most significant change to English (British) insurance law ever. It became effective on 12 August 2016 and applies to all classes of insurance including reinsurance and retrocession. The main changes refer to amendments to Placement (pre-contractual obligations), Warranties (express and implied), Fraudulent Claims and, conditionally, Damages (for late payment of claims) subject to Enterprise Act 2016.

The author of this paper would like to present an impact of above mentioned main changes to the insurance industry, especially to transport insurance respectively hull insurance of vessels (H&M) and to show practical implications when underwriting H&M risks. Namely, 2/3 of countries use Institute Time Clauses — Hulls (1/10/83 respectively 1/11/95), shortened as ITC — Hulls (1/10/83), as a wor-

ding for hull insurance of vessels. Likewise, many other wordings derive from ITC — Hulls (1/10/83).

Finally, the author of this presentation wishes to induce participants to consider justification of future application of English law and practice instead of domestic law, especially Croatian law.

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Enforcement Over an Aircraft and Over The Vessel — Same Rules Before and Some New Ones After Initiation of a Bankruptcy Procedure

In addition to nine articles (Articles 167 — 175) of the Act on Obligatory and Proprietary Rights in the Air Traffic the majority of the provisions of the Maritime Code on the enforcement and the procedure of securing the claim over a vessel, precisely the provisions of the Articles 854, 857, 863, 864, 867 — 988, apply on the on the procedures of enforcement and of securing the claims over an aircraft.

Provisions of the general piece of legislation regulating the area of enforcement and securing the claims, the Enforcement Act apply to a lesser extent on the enforcement over a vessel and over an aircraft i.e. the application of that regulation is alternative.

Maritime Code with respect to the enforcement over a vessel and over an aircraft provides two types of procedure:

monetary claim enforcement

enforcement for a delivery of a vessel/aircraft

and with respect to these procedures it provides detailed rules on the content of the enforcement proposal and the enforcement decision, jurisdiction (competence) for deciding on the proposal, exemption from the enforcement, enforcement actions, determination of the value of the vessel/aircraft, method and terms of sale, creditors' settlement, termination of the procedure.

Both types of the procedure have experienced certain changes provided under the provisions of the Bankruptcy Act. That regulation is in force as of 1 September 2015 and it has introduced significant changes into Croatian bankruptcy legislation — in some parts the legislator has kept previous legislation solutions so certain rules related to the enforcement procedures have not been changed whilst for some it has introduced new solutions. One of such rules is the status of enforcement procedures over a vessel and over an aircraft initiated by the creditors with separate collection right (creditors entitled to a separate collection i.e. the ones entitled to a pledge or collection right over an asset or a right which is registered with the public registers).

Under the provisions of the previous Bankruptcy Act the position of the bankruptcy creditors in the context of the enforcement creditor's powers in the enforcement proceedings was different from the one that was granted to the creditors with separate collection right and to the creditors



with an exclusion right (creditors that, on the basis of their some proprietary or personal right, can prove that some asset does not belong to the insolvency estate). It was regulated that the bankruptcy creditors are not entitled to initiate the enforcement nor the procedure of securing the claim on the parts of the debtor's assets belonging to the insolvency estate nor on the other debtor's assets after commencement of the bankruptcy procedure and the enforcement procedures pending at the time of the commencement of the bankruptcy procedures shall be suspended and finally terminated by the enforcement court. With respect to the creditors with separate collection right and the creditors with an exclusion right it was regulated that they are entitled to initiate the enforcement or the procedure of securing the claim pursuant to the general rules of the enforcement procedure and the suspended enforcement and the procedures of securing the claim initiated by those creditors before commencement of the bankruptcy shall be continued and conducted by the enforcement court pursuant to the general rules of the enforcement procedure.

With respect to the encashment of a vessel and an aircraft that piece of legislation has regulated different rules depending on the fact whether the creditor with separate collection right has initiated enforcement procedure or not so it provided (i) the sale executed by the bankruptcy judge on the basis of the proposal of the bankruptcy administrator or (ii) the sale in the enforcement procedure initiated by the creditor with separate collection right.

Under the provisions of the new Bankruptcy Act the status of the bankruptcy creditors and the creditors with an exclusion right remained whilst the rules on the powers of the creditors with separate collection right have been amended in a manner that they are no longer entitled to initiate a separate enforcement nor procedure of securing the claims and the procedures pending at the moment of commencement of the bankruptcy shall be suspended and then continued and conducted by the bankruptcy court in the bankruptcy procedure applying the rules on encashment of the assets over which a separate collection right exists.

Additionally, the rules on values under which the vessel/ aircraft cannot be sold which rules differ from the ones proscribed by the Maritime Code have been introduced in the rules on encashment of the vessels and aircrafts.

Subject matter of this article is the analysis of the relations and the potential collision of the said regulations in the context of the enforcement over a vessel and over an aircraft before and after the initiation of the bankruptcy procedure.

