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New rules regarding recycling of ships and mobile offshore units

1. Introduction

The Ministry of Climate and Environment has laid down Regulations of 6 December 2018 No. 1813 on ship recycling, and the Norwegian Maritime Authority (NMA) has laid down amendments to Regulations of 24 November 2014 No. 1458 on port State control. The rules implement Regulation (EU) 1257/2013 on safe and sound ship recycling (Ship Recycling Regulation), which was incorporated into the EEA Agreement on 6 December 2018. «Ship» is here used as a broad term, and the rules will therefore also apply, inter alia, to fishing vessels and mobile offshore units.

The Regulation is based on the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (Hong Kong Convention), which was adopted by the IMO (International Maritime Organization) in 2009. Being an initiator of the Convention, Norway was the first country in the world to ratify the Hong Kong Convention in 2013. Five years later, the Convention has still not entered into force due to an insufficient number of ratifications. In order to ensure safe and environmentally sound ship recycling and also facilitate the ratification of the Hong Kong Convention, the EU adopted the Ship Recycling Regulation on 20 November 2013. Certain provisions of the Regulation went into effect on 1 January 2015, but the Regulation will not be fully applicable until 31 December 2018.

2. Consultation

Introduction

On behalf of the Ministry of Climate and Environment (MCE) and in consultation with the Norwegian Environment Agency (NEA), the NMA circulated the proposed new rules regarding ship recycling for review from 11 June to 1 August this year. We have received some consultative statements, which will be commented on below. All statements were presented to the MCE prior to determination.

Consultative statements

In general, the Norwegian Fishing Vessel Owners Association (Fiskebåt) believes that an arrangement for approval of recycling facilities, together with a requirement to provide a recycling plan prior to condemnation, will be sufficient to reach the goal of sound ship recycling. Furthermore, Fiskebåt considers it a significant weakness that a cost assessment from 2009 has been used as a basis. According to Fiskebåt, the rules will impose major costs on the Norwegian ocean-going fishing fleet, as Norwegian authorities require condemnation of vessels as a condition of permitting merging of allowable amounts of catch. In Fiskebåt's opinion, the consequence of introducing the ship recycling requirements should therefore be that the special Norwegian condemnation requirement be removed.

The Norwegian Fishermen's Association repeated Fiskebåt's comments regarding the impact assessment and the need to reconsider the condemnation requirement. As regards the scope of application and what is meant by operating exclusively within Norwegian jurisdiction, the Norwegian Fishermen's Association points out that the connection with the trading certificate may have unfortunate consequences. Several vessels have a certificate which allows the vessel to depart from Norway, e.g. for Denmark, even though the company has no intention of departing from Norway.

The Maritime Department of the Federation of Norwegian Industries refers to the fact that the company's duties pursuant to the ship recycling legislation imply a requirement for continuous maintenance of the inventory of hazardous materials throughout the ship's life, and that this is not adequately stated in the description of the company's duties in the consultation letter.

The Norwegian Shipowners' Association (NSA) supports initiatives raising the standards for this industrial sector, but finds the introduction of special provisions concerning EEA tonnage very problematic. Furthermore, the NSA finds it problematic that the Regulation goes further than the Convention and thus deviates from the compromise made between ship-breaking country and supplying country, forming the basis of the consensus underlying the Hong Kong Convention. The NSA is concerned about the recycling capacity of the European List of approved yards. The NSA refers, among other things, to numbers from the ECSA that suggest an increased need for replacement of the fleet in the future as a result of stricter emission requirements. The largest ships (300 metres and upwards), of which currently only a small percentage is recycled in the EU and Turkey, have the greatest probability of discrepancies between need and actual capacity. Brexit may further reduce the EU capacity, as 2 of 3 European shipyards able to receive ships of more than 300 m are located in the UK. If the capacity of the European List is not increased by adding Hong Kong classified Asian shipyards, it will have negative competitive effects. Therefore, the NSA recommends that Norwegian and European authorities delay the implementation of the legislation.

The NMA's assessment of the statements

During this consultation process, it has not been possible to take the substantive provisions into account. The provisions were adopted in the EU in 2013. As opposed to a Directive, which may allow for national solutions, a Regulation will normally be incorporated into the EEA Agreement in its adopted form and wording. The NMA takes note of the comments on the impact assessment and calculations from 2009. Nevertheless, in our view, the calculation of the use of utilisation, described as full-time equivalents, is also relevant for the expected work related to the enforcement of the certificate requirements set out by the Regulation. The comment regarding condemnation requirements and merging of allowable amounts of catch has been forwarded to the MCE.

As for the scope of application and the connection with the trading certificate, we have taken a closer look at the comment from the Norwegian Fishermen's Association and tried to respond pragmatically. See more details under "Scope of application".

An overview of the duties of the company is provided below. We agree with the Maritime Department of the Federation of Norwegian Industries that continuous maintenance of the inventory of hazardous materials is an important part of these.

The NMA takes note of the comments from the NSA and appreciates the concern that the European List may have insufficient capacity. We want to encourage the Commission to increase the list capacity, and this will be one of our focus areas in relevant forums. The Regulation provides no mechanism for delaying the entry into force beyond 31 December 2018, and as far as we know, no such initiative has been introduced for consideration by the EU legislative bodies.

3. Details about the legislation

Introduction

The Regulations implement the EU Regulation on Ship Recycling and will affect ships and ship recycling facilities.

The relation to the Basel Convention and Waste Shipment Regulation

Ships defined as waste are regulated by the Basel Convention. The Convention has been implemented in the EEA through the Waste Shipment Regulation (EU 1013/2006), which is implemented into Norwegian legislation through the Waste Regulations section 13 regarding transboundary shipment of waste. In other words, ships being taken out of service are considered waste in accordance with the waste shipment legislation, and ships are also covered by the prohibition imposed by this legislation on the export of hazardous substances out of the OECD area. Up until now, it has therefore been prohibited to export Norwegian ships from the OECD area to recycling facilities located in non-OECD countries, for instance to beaches in Southeast Asia. Within the OECD area, the export of ships is subject to report and requires consent from the authorities of both export and import countries.

The relation between the ship recycling legislation and the waste shipment legislation is established in such a way that the Waste Shipment Regulation does not apply to ships covered by the ship recycling legislation. Furthermore, for ships covered by the ship recycling legislation, the current duty of report and prohibition against export out of the OECD will no longer apply. The ships will instead be subject to a certification regime which follows the ship from cradle to grave, and the company commits itself to recycling at facilities included in the European List of approved recycling facilities only, within or outside the EU and the OECD.

For ships other than those covered by the scope of the new ship recycling legislation, the Waste Regulations will continue to apply. These could be Norwegian ships of less than 500 gross tonnage, military vessels or large commercial ships which operate exclusively within the sovereignty or jurisdiction of Norway, and which are thus exempt from the ship recycling legislation.

Scope of application

The ship recycling legislation applies to all ships flying the flag of a member State of the EU or EEA. Parts of the legislation also apply to third-country ships calling at ports or anchorages in the EEA. The term ship is broadly defined and includes, inter alia, fishing vessels, mobile offshore units, floating and self-elevating platforms and subsea vehicles. Exceptions have been made for ships of less than 500 gross tonnage, government-owned ships (e.g. warships) and ships operating throughout their service life only in waters under the sovereignty or jurisdiction of the Member State whose flag the ship is flying.

Since the scope of application is related to the area of operation¹, ships exempt from the ship recycling rules are not prevented from departing Norway in situations of necessity, where repairs are needed or similar. Moreover, ships only engaged in domestic voyages can, as now, be exported at the end of their service life. In connection with the phasing out of ships and installations falling outside the scope of the EU Ship Recycling Regulation, the Basel Convention and Regulation (EU) 2006/1013 (the Waste Shipment Regulation) will continue to apply if the recycling is to be carried out outside Norway.

As regards what is meant by operating in waters subject to the jurisdiction of Norway throughout the ship's operational life, it is, as a starting point, the trading certificate which determines whether the ship is required to have certificates in accordance with the recycling legislation. If the ship has a trading certificate allowing the ship to leave Norwegian jurisdiction, the starting point is that the ship is not exempt from the recycling rules. Consultative statements make it clear that this may have unfortunate effects on a group of fishing vessels certified for Bank fishing I or greater trade area. For fishing vessels certified for Bank fishing I/II or Deepsea fishing I/II, the NMA will therefore allow a restriction on operating beyond Norwegian jurisdiction to be placed upon the certificate. This is a decision for the company to make for the vessel. Should it, at a later time, be relevant to change the operational pattern

with the result that the vessel is covered by the scope of the ship recycling legislation, an initial survey must be conducted and an IHM Certificate issued.

Furthermore, it is the NMA's assessment that also for mobile offshore units, there is reason to consider the scope of application of the recycling legislation regardless of the trading certificate. Mobile offshore units tend to operate with long-term contracts and a relatively high degree of predictability. The NMA therefore believes that for this vessel category, it would be appropriate to assume as a starting point that existing Norwegian-flagged mobile offshore units which are to operate in waters falling under the sovereignty of Norway for a long time, are not covered by the rules until any changes to the area of operations are made.

The company's duties

The Regulation prohibits or restricts the use of substances specified in Annex I to the Regulation, cf. Article 4. The company shall compile a ship-specific inventory of hazardous materials (IHM). The IHM shall identify the hazardous materials referred to in Annex II to the Regulation, their location and quantities, and the IHM shall also provide evidence of compliance with the restrictions on the use of materials listed in Annex I, cf. Article 5. The Regulation specifies that for existing ships, the duty to identify hazardous materials referred to in Annex II, their location and quantities applies as far as practicable.

The IHM shall be compiled taking IMO guidelines into account. These guidelines have been developed considering new and existing ships. Furthermore, the European Maritime Safety Agency (EMSA) has developed non-binding guidance on the development of an IHM. The EMSA guidance is based on the mentioned IMO guidelines, in addition to IMO guidelines for supervision and certification pursuant to the Hong Kong Convention. The purpose of the EMSA guidance is to provide a framework for a harmonised development of the IHM in the light of the Regulation, and at the same time facilitate application and enforcement. <http://www.emsa.europa.eu/news-a-press-centre/external-news/item/3003-emsa-guidance-on-the-inventory-of-hazardous-materials.html>

In accordance with the EMSA guidance, the IHM shall be prepared by an individual IHM expert or IHM expert company. The IHM shall be properly maintained throughout the operational life of the ship, so as to ensure that the inventory of hazardous materials is always updated, reflecting changes in the equipment and environmental requirements. The company shall see to it that necessary procedures are in place to ensure compliance with these obligations, including decide who will be in charge of necessary maintenance and update of the IHM.

Furthermore, the company shall provide the recycling facility with ship-relevant information necessary for the facility to be able to develop a ship recycling plan, cf. Article 6. Ships covered by the Regulation may only be recycled at facilities that are included in the European List of Approved Ship Recycling Facilities, and it is the responsibility of the company to ensure that this is done. When the company has the intention to recycle a ship, the company shall notify in writing the NMA or a classification society recognised by the NMA. It is set out in the Regulation that the administration shall determine a timeframe for such notification, which in the Regulations is set to not later than one month ahead of the planned recycling.

Certification

The flag State or a recognised classification society shall verify that the IHM complies with the requirements of the Regulation and issue an inventory certificate. An initial survey shall be conducted, and the certificate shall be renewed every five years. In the event of major changes, the company shall request an additional survey. Before the ship is taken out of service, a final survey shall be conducted, which shall verify that the IHM complies with the requirements of Article 5 and that a valid ship recycling plan has been developed at an approved recycling facility. The flag State or a recognised classification society shall then issue a ready for recycling certificate with a validity of three months.

The NMA's fees legislation has been amended. Certification fees are calculated based on the time spent and the applicable hourly rates in the Norwegian Maritime Authority's Tariff of Fees.

Entry into force for new ships, existing ships and ships registered in third States

Ships constructed after 31 December 2018 shall have on board a valid inventory certificate. The construction date of new ships is more closely defined in Article 3 of the Regulation.

Within 31 December 2020, existing ships are also required to have on board a valid inventory certificate. If such ships are going for recycling after 31 December 2018, the ship must have a valid ready for recycling certificate. As the final survey implies a check of the ship's IHM, the Regulation sets out that the final survey and the initial survey may be conducted at the same time for operating ships which are taken out of service, and do not already have a valid IHM certificate.

In other words, for every ship covered by these rules, this implies that ships being taken out of service after 31 December this year may only be recycled at facilities included in the so-called European List of approved facilities. Prior to such recycling, the company shall prepare the ship for recycling by entering into an agreement with an approved recycling facility, see to that a final survey is requested and completed, and ensure that a ready for recycling certificate is issued by the flag State or a recognised classification society.

From 31 December 2020, ships flying the flag of a third country calling at a port or anchorage in the EEA shall have on board a valid statement of compliance and an IHM issued by the flag State or an organisation authorised by the flag State. The statement of compliance shall document that the ship has a ship-specific IHM which complies with Article 5(2) of the Regulation and developed in accordance with the IMO guidelines. The fact that the requirements for material content and flag State verification which apply to ships flying the flag of a third country are similar to those applying to EU/EEA ships, is in line with the principle of "*no favourable treatment*" for ships flying the flag of a non-EU/EEA country calling at EU/EEA waters.

Port State control

The Norwegian Maritime Authority has laid down amendments to the Regulations of 24 November 2014 No. 1458 on port State control to be able to carry out inspections of foreign ships in accordance with the Ship Recycling Regulation. Basically, the port State control shall ensure that the ship has on board a valid inventory certificate or a valid ready for recycling certificate. In certain cases, an expanded inspection may be carried out in line with the general principles for port State control. Actions in response to non-conformity include warning, detention, rejection or suspension/refusal of access.

Sanctions against breach of the company's duties

In addition to the Pollution Control Act, the Regulations on ship recycling have been laid down pursuant to sections 33, 36, 43 and 44 of the Ship Safety and Security Act. Section 33 regulates, inter alia, the right to issue rules on environment certificates, e.g. the IHM certificate and ready for recycling certificate, while section 36 in particular relates to ships being taken out of service. If the company wilfully or through gross negligence substantially violates the provisions made in or pursuant to section 33, it shall be liable to fines or imprisonment for a term not exceeding two years, cf. the Ship Safety and Security Act section 64. A breach of section 36 is subject to the administrative sanction regime (violation fines) pursuant to the Ship Safety and Security Act section 55.

Requirements for ship recycling facilities

The EU Ship Recycling Regulation imposes a duty on the company to recycle ships at recycling facilities included in the European List of Approved Ship Recycling Facilities only. Article 13 of the Regulation lays down a number of requirements that the recycling facilities must meet in order to be approved. Facilities located outside the EEA shall be approved by the Commission. For facilities located in the EEA, approval is granted by local authorities responsible for recycling facilities. In Norway, the Norwegian Environment Agency (NEA) is the responsible authority. Facilities located in Norway which want to become authorised ship recycling facilities are requested to contact the NEA for details about the application process.

4. Economic and administrative consequences

Consequences for the ship/company

New Regulations on ship recycling regulate circumstances throughout the ship's life cycle, from construction (IHM requirements), through certification and certification renewal, until the decision is made to send the ship for recycling. On the other hand, identification, quantification and listing of hazardous materials based on IMO guidelines are already being performed for many newbuildings, and it is to be expected that existing ships with variable information and data on on-board materials will face the biggest challenges.

Costs related to the certification might have a negative effect on Norwegian-flagged ships compared to ships flying the flag of a non-EEA member State. As similar substantive requirements will be made applicable to ships flying the flag of a third country and calling at EEA ports as from 31 December 2020, the differences will be of lesser importance for ships operating in Europe.

Nevertheless, it is assumed that the major disadvantage for EU/EEA flagged ships is that the ships may only be recycled in facilities in a third country and in the EU/EEA which are included in the European List of approved ship recycling facilities. This may effect the recycling capacity and thus the costs associated with the recycling of ships being taken out of service. A concern has been expressed from certain EU member States and the industry that the approval process in third countries is too slow and the recycling capacity insufficient. The Commission is actively working on approving more facilities, and it is expected that the disadvantage for EU/EEA flagged ships will be reduced as more facilities are approved.

The environmental challenges of ship recycling, on the other hand, are huge and serious, both in terms of working conditions and the external environment. It has proved difficult to enforce legislation for ships related to hazardous waste. Which country should be considered the exporting country in accordance with the waste shipment legislation is determined territorially based on the location of the waste, in this case the ship, at the time of decision to phase it out. In many cases, there is no connection between the ship and the state which, according to the waste shipment legislation, is obliged to carry out the recycling, other than the fact that the ship is at a certain place at a certain time. In addition, the decision of phasing out may be taken while the ship is in international waters, a scenario which is not addressed in the waste shipment legislation. The Ship Recycling Regulation places the responsibility for the enforcement of the company's duties on the flag State in line with common practise in the shipping industry, and sets out a survey and certification regime well-known to the maritime industry. Moreover, the NMA has noted that it is not unusual for financial institutions to require safe handling of ships which are taken out of service, and requirements for certification and recycling at approved facilities provide financial institutions and other actors with specific matters for which they may stipulate terms. Although the Regulation does not eliminate the risk of circumvention (e.g. in case of a flag shift), this legislation is more specifically adapted to the shipping industry than the waste shipment legislation, and we expect the rules to contribute to reducing the negative environmental effects of the recycling of Norwegian ships.

Consequences for Norwegian ship recycling facilities

It is assumed that the major disadvantage for facilities wanting to be included in the European List of approved facilities is an increased amount of administrative tasks related to developing a ship recycling plan, a declaration of completion and an application for approval. Most likely, there will be no need for physical changes of the facility due to these Regulations.

Administrative consequences for authorities

In connection with an impact assessment of an implementation of the Hong Kong Convention, it was considered that the rules would generate additional work for the NMA equating to three full-time equivalents.

According to the NMA's assessments, around 50-60 operating ships and mobile offshore units will be certified by the NMA. Certification of some newbuildings is also to be expected. In addition, there might be ships and mobile offshore units not covered by the scope of the ship recycling legislation for which the

company still wants IHM certification etc. In addition to the tasks related to certification and supervision, new rules will require resources related to competency building and the development of checklists, procedures and training material.

The NEA expects the number of approved facilities to be approximately the same as today (four nationally approved facilities), and each approval round is estimated to require around four man-weeks. In addition, new tasks related to the approval of ship-specific recycling plans and interaction with the NMA will require a great deal of resources.

Altogether, it is assumed that the legislation will bring more advantages than disadvantages.

Yours faithfully,

Olav Akselsen
Director General of Shipping and Navigation

Linda Bruås
Acting Head of Department