

ANNUAL REPORT 2019

Maritime and Transport Law

NJORD
LAW FIRM

ANNUAL REPORT

TRENDS 2019 AND 2020

In this annual report of the Maritime And Transport Team, we will recap the legal trends this year that have had the main focus in the transport industry in 2019. We will also look at the trends that we believe will have an impact on the industry on 1 January 2020.

THE MOBILITY PACKAGE

The Mobility Package was a very hot topic on the political agenda in the EU throughout 2018, and the work was intensive to have the Mobility Package adopted before the European elections in May 2019. However, the efforts were unsuccessful, and negotiations resumed when the new European Parliament convened.

Just as the year 2019 was about to end, the EU announced that an agreement on the Mobility Package had been reached and that only what is considered formalities remain until the final regulations are adopted and can be published. This process is expected to take place in the spring, after which the new driving and rest time rules are expected to take effect 20 days after publication. The new cabotage rules and posting rules applicable to the road transport sector are expected to take effect 18 months after publication. New intelligent tachographs must be developed and installed in the vehicles to monitor compliance with the rules of the Mobility Package.

Read our article about the content of the Mobility Package in this annual report – a Mobility Package that will undoubtedly turn international road transport and the entire logistics chain upside down.

AGREEMENT ON ROAD HAULAGE

2020 is only just underway before an agreement on road haulage has been concluded in the Danish Parliament.

The agreement aims to ensure orderly conditions for foreign drivers driving in Denmark as well as fair and equal competition for Danish haulage companies competing with foreign companies with lower labour costs.

The current draft bill will pave the way for foreign drivers to be entitled to pay based on Danish collective agreements. There are many challenges with any legislation of this nature.

> [Read more about this in our most update](#)

INCOTERMS®

In September 2019, Incoterms® 2020 was launched, and the new sales clauses came into force on 1 January 2019.

The review was conducted by an international ICC working group which has obtained comments from national ICC committees around the world.

The Danish ICC Committee consisted of experts from relevant parts of the business community, all of whom have made valuable comments on the revision.

We are proud that Ulla Fabricius led the Danish ICC Committee. She has also been in charge of the Danish processing and translation into Danish of Incoterms® 2020 assisted by Christian Schaap and Liselotte Rigtrup. Therefore, our Maritime and Transport Team is more than capable of advising on Incoterms® 2020, just as we under the auspices of ICC Denmark have seminars around Denmark, where we explain the changed sales clauses.



2020 will hold significant changes to the industry. The transport chain needs to be rethought.

Ulla Fabricius

WHAT'S NEW IN INCOTERMS® 2020?

The most important news is that the rules are laid out and explained in a way that guides users to the right clause for the insertion into a sales contract in a much better way than in the past.

As there are many case-law examples of incorrect application of the clauses, it was an essential task when revising the clauses that the clauses were introduced and set up in a new and more user-friendly way.

Remarkably, the ICC has met an expressed wish that a bill of lading may be issued with an on-board notation for a sale on FCA terms before the goods have been loaded onto the ship. Unconventional, but very practical.

> [Learn more about the news in Incoterms® 2020 in our Quarterly Update](#)

> [ICC Denmark has written about the Danish processing and translation](#)

> [Here you can find ICC Denmark's seminars as they are put on the calendar](#)

DANSKE SHIPPING- OG HAVNEVIRKSOMHEDER (DANISH SHIPPING AND PORT COMPANIES)

In September 2019, DI announced the establishment of a new trade association: Danske Shipping- og Havnevirksomheder, which is a merger of Danske Havnevirksomheder and Danmarks Skibsmæglerforening. The new association comprises just over 100 private companies, which are mainly active in port terminal operations, freight handling, ship brokerage, chartering and other activities related to ports and maritime transport.

By establishing Danske Shipping- og Havnevirksomheder, members want to unite their

forces and create a stronger association with improved service and a strengthened profile. This can, among other things, be beneficial considering the challenges that the industry is facing such as Brexit, customs systems, climate and environment, housing construction at commercial ports, etc. We wish the new association fair winds and following seas.

BREXIT

After a very long time of uncertainty, Brexit is now a reality. The United Kingdom will formally leave the EU by the end of January 2020. However, the United Kingdom will remain in the internal market at least until the end of the year. Important agreements must be negotiated and concluded between the EU and the United Kingdom, which may have a significant impact on the industry. It will be exciting to follow the negotiations in 2020.

SULPHUR CONTENT IN BUNKERS

The new requirements for lower Sulphur content in bunkers took effect on 1 January 2020. Therefore, challenges with installing scrubbers or switching fuel have occurred and still exist.

> [Read our previous update here](#)

INSURANCE BROKERAGE

The Danish Financial Supervisory Authority has now announced that transport companies that provide transport insurance must be registered as ancillary insurance brokers and meet the requirements for this type of broker undertaking.

Similarly, it has been announced that the provision of other types of insurance, such as liability insurance for performing hauliers, is considered insurance brokerage. Therefore, such transport companies will be required to be registered in the Danish FSA Insurance and Reinsurance Broker Register and meet the significantly more extensive requirements for "Fit & Proper", competencies and tests, IPID, requirements and needs tests, and good practice.

TOP 10

MOST READ UPDATES

Here you will find the most read content of the year. Get updated on the important decisions and analyses – just as a lot of others have!

1. [Flight delay compensation: Claimant was not entitled to recover legal costs](#)
2. [Are you ready for robots with artificial intelligence?](#)
3. [Practical consequences of a hard Brexit - roughly](#)
4. [Eastern High Court: Danish haulier's use of foreign drivers is subject to the rules on labour-hire](#)
5. [The case of the Romanian driver's pay and employment relationship continues before the Danish courts](#)
6. [New judgment on "extended Danish conditions 2010"](#)
7. [New act on insurance mediation - have you remembered to re-register?](#)
8. [Public consultation on new rules on special transport](#)
9. [New approach to garbage in the sea](#)
10. [The difference between an electric scooter and a bike?](#)



CONGRATULATIONS

STEFFEN HEBSGAARD MUFF JOINS AS A PARTNER

We are pleased that on 1 January 2020 we were able to welcome Steffen Hebsgaard Muff as a Partner at NJORD. As one of the leading experts in construction and maritime law, he will continue to work on energy and infrastructure projects on and offshore.

THE FUTURE AS A PARTNER

Steffen specialises in offshore projects and maritime law. He contributes to the development of NJORD's international practices within energy and offshore construction, including offshore wind. Also, he has a prominent role in our trade group on energy.

"2020 will be about getting accustomed to my new role, the responsibility and the new tasks that come with it, and of course the opportunities. The legal landscape within, for example, transport is undergoing many changes, and within this area, our department has a greater focus on, among other issues, compliance and offshore services rather than traditional cases about cargo claims, of which there are fewer and fewer."

- Steffen Hebsgaard Muff

"In addition, I look forward to having an even better opportunity to advise on the implementation of new technology proactively."

- Steffen Hebsgaard Muff

A REAL NERD

Steffen is a technology nerd – right up to the fingertips. He is one of the driving forces behind NJORD's NewTech team and enjoys sharing his

knowledge and vision for a future-proof and better legal system. Here's a selection of the latest articles, podcast, and video releases:

> [Thi kendes for ret: Robotten er skyldig](#)

> [Magtens Tredeling podcast ep. 2.14 Advokatens nye forretningsområder](#)

> [NewTech Videoserie](#)

> [Robotter, retstilling, regering](#)

"I want to help develop the business, within the industries and legal areas I handle, but also in relation to the implementation of new business models. For example, it can be in the form of package solutions and technological tools such as LegalTech solutions. The impact of technological development on other industries, especially the transport sector, is also one of my major areas of interest."

- Steffen Hebsgaard Muff

We look forward to entering 2020 with another ambitious and visionary partner on the team.



It is an exciting time to become a partner.
If you dare to seize them, there are many opportunities.

Steffen Hebsgaard Muff

NEW TECHNOLOGIES AND NEW JURISDICTIONS

OFFSHORE WIND

While the traditional freight market is experiencing stagnant growth and high uncertainty, there is a lot of growth in the offshore wind segment – especially in terms of logistics and installation as a service.



Written by Steffen Hebsgaard Muff, Attorney at law and Partner at NJORD Law Firm

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A GROWING MARKET

The growth is primarily driven by new markets where the United States and Taiwan (as the starting point for expansion in Southeast Asia) have attracted significant attention. However, the introduction to new markets is always difficult and poses a number of challenges. Regardless, current growth does not change by the fact that offshore wind continues to depend on subsidies and, thus, political goodwill in the short and medium term and savings in the slightly longer term. In order to achieve savings, new technology is needed; in recent years, we have seen rapid development in the use of drone technology, and automation and use of data will have a major impact. There are challenges that may hinder the full use of such technology, and often the regulation is more likely than the technology to be the obstacle.

HOW ARE COOPERATIONS IN NEW JURISDICTIONS ESTABLISHED?

The markets in the United States and South-East Asia are, in several areas, significantly different from the European market. The most appropriate way to deal with these differences, as well as meet the often-occurring demands for "local content", is to cooperate with a local partner.

Such cooperation can take many forms. It may include a short-term agreement on delivery as a subcontractor, where the partner assumes all risks relating to the local market and may include long-term joint ventures aimed at establishing a common, permanent presence on the market. Fiscal and organisational considerations can often have a significant impact on the preferred form.



In terms of substance, it is a fundamental principle that a position, where possible, must be established where immediate means are available to put pressure on your partner. The most obvious way to accomplish this is by ensuring that you control payments (customers), deliveries or similar. If the only action available to you in the event of your partner's default is a legal action, you have put yourself in an unusually weak negotiating position and made it easy for the partner to acquire the entire local business in the long term.

HOW ARE DRONES LEGALLY IMPLEMENTED?

In recent years, we have really seen the drones make their entry into offshore wind. This has occurred, despite the relatively high regulatory uncertainty, when the technology was introduced, and that the regulation of drone flight remains highly diverse and national. Common EU rules are not expected to commence until 2022. Until then, the current regime, where, for example, the system in Denmark does not consider the specificities of flight over water, will continue.

> [See our article from 2017 about this](#)

The most common approach in the industry is to leave "compliance" to the drone operator, which

by far is the most appropriate way to address this issue. It will continue to be this as drones become more and more autonomous.

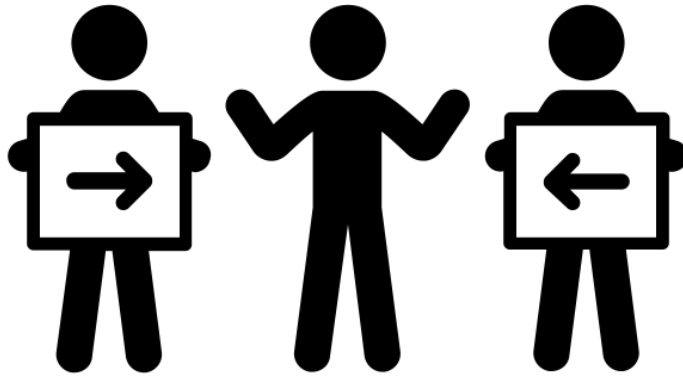
One of the next challenges that will arise in this area is drone freight (see our article [here](#)), where the Danish Air Navigation Act, in principle, will apply. Here it would make sense to include freight as part of a larger logistics agreement in order to achieve the greater flexibility that this type of agreement allows.

WHAT ABOUT AUTONOMOUS SHIPS?

Autonomous ships pose a number of other challenges. The biggest is that (fully) autonomous ships are not currently allowed under COLREG and that unmanned ships, although there is no direct ban on this, are also not really an option in international shipping. What is likely to be seen soon is the possibility of experimentation with unmanned ships in national shipping, which, in principle, will make experiments at a number of offshore wind farms possible.



NJORD LAW FIRM NEW TECH



SECTION 4.0

Personal liability is 'so yesterday'

Watch the latest video in our NewTech video series, where Steffen Hebsgaard Muff explains how the focal point of our compensation system is still personal liability and why it would be better if this was different.



ROOFTOP EVENT

YOUNGSHIP DENMARK

NJORD Law Firm has the pleasure of hosting the first YoungShip Denmark event of the year.

The event takes place on Thursday, 20 February 2020, from 5 p.m. until 8 p.m.

After a lecture on a professional subject, there will be ample opportunity to network while some drinks and appetisers are served.

YOUNGSHIP DENMARK

YoungShip Denmark is part of the YoungShip organisation, founded in Norway in 2004. YoungShip Denmark organises four annual events aimed at young professionals in the maritime industry.

MEMBERSHIP

Visit [YoungShip's website](#)

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THE MOBILITY PACKAGE

NEW RULES AIMED AT THE ROAD TRANSPORT INDUSTRY IN 2020

The Mobility Package has been the subject of extensive debate since the Commission presented their proposals for new rules for the road transport industry in the EU on 31 May 2017. Finally, a preliminary agreement on a compromise in the areas that will be crucial to the industry in the future was concluded at the autumn's trilogue negotiations. The compromise was approved by the European Parliament's Committee on Transport (TRAN) on Tuesday, 21 January 2020.



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The final text of the Mobility Package is currently only awaiting formal approval by the Council of Ministers and the European Parliament. This procedure is expected to be completed over the next few months.

Upon final adoption and commencement, the Mobility Package will have a major impact on the many transport companies in the EU, which today provide cross-border transport services and it is to be expected that the handling of the Mobility Package is on the agenda of all transport companies in 2020.

THE CONTENT OF THE MOBILITY PACKAGE

The Mobility Package will lead to changes to the existing rules on driving and rest periods, cabotage and access to the road transport industry. In addition, a set of new sector-specific rules on the posting of drivers will be introduced.

We will outline below some of the points in the Mobility Package that the industry should especially focus on.

THE ACCESS TO THE ROAD TRANSPORT INDUSTRY

The first part of the Mobility Package holds amendments to Regulation No 1071/2009 of the European Parliament and of the Council, which establishes common rules concerning the conditions to be complied with to pursue the occupation of road transport operator in the EU.

If the Mobility Package is adopted in its current form, it will, among other things, lead to an expansion of the factors to be taken into account by national authorities in the context of issuance and maintenance of haulage permits. Going forward, the conditions on good repute will include serious breaches of national tax rules, rules on the protection of workers, including the rules on posting and cabotage. The requirements on good repute will be similarly expanded concerning the approval by the authorities of transport managers.

Haulage companies carrying out haulage services by vehicles of the 2.5 to 3.5 tonnes weight class will also be required by the new rules to obtain haulage permits. In Denmark, van hauliers who



carry out haulage with vehicles in the 2 - 3.5 tonnes weight class are obliged to obtain a haulage permit.

> [Read more about the Danish rules for vans](#)

> [Read how to prepare for the rules](#)

The Mobility Package will also lead to a change in the financial requirements that transport companies must meet to obtain and retain haulage permits. The specific financial requirements will depend, among other things, on the type and how many vehicles the company has registered in its fleet.

More significant requirements will be imposed on the activities of transport companies in the country of establishment, where the undertakings must have established an "operational centre" from which the company's transport services are to be managed and controlled. It is likely to still be primarily up to each Member State to lay down specific requirements for operational centres for transport companies who wish to or already has established themselves in the Member State concerned.

The most notable proposal for the amendment of Regulation No 1071/2009, is the requirement to return all vehicles in the company's fleet to one of the operational centres of the transport company in the Member State of establishment within eight weeks of the vehicle leaving it.

CABOTAGE

The Mobility Package will lead to amendments of Regulation No 1072/2009 of the European Parliament and of the Council on common rules for access to the international road haulage market. This is the Regulation where the rules on cabotage and the framework for the national authorities monitoring are found.

The general considerations behind cabotage rules are to enable transport companies to optimise international haulage and not to force them to have lorries to driving around empty when they are in Member States other than where the companies are established.

The Mobility Package will maintain the current scheme, under which three cabotage trips are allowed within seven days in connection with international driving.

Something new is the introduction of a waiting period of four days after the completion of cabotage in a host Member State. During the waiting period, the vehicle may not return to and perform cabotage in the same host Member State. As part of the introduction of the waiting period, the documentation requirement for companies will be expanded so that clear evidence of the vehicle's activities and movement during the waiting period will have to be provided if the vehicle returns to the same host Member State after the waiting period has expired.

The proposed amended rules on cabotage state that the Member States must introduce rules on liability for freight forwarders and other partners of the haulier, where they have known or should have known, where appropriate, that ordered transport services would involve breaches of cabotage rules. Currently, in Denmark, liability for freight forwarders is being pursued under the general rule of complicity in Section 23 of the Criminal Code.

Transport companies with vehicles in the 2.5 – 3.5 tonnes weight-class will also be subject to cabotage rules after the Mobility Package enters into force.

DRIVING AND REST PERIODS

The driving and rest periods of drivers are governed by Regulation No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport.

The Mobility Package's amendments to the Regulation on Driving and Rest Periods will particularly affect drivers' ability to hold regular and reduced weekly rests.

The weekly rest periods will be calculated based on a four-week reference period.

As a starting point, a driver may hold one reduced

rest period for at least 24 hours within the four weeks. However, the reduced rest period must be compensated for by extending another rest period, and this extended rest period must be held no later than the end of the third week of the reference period.

Going forward, an international driver driving outside his state of residence or the state of establishment of the transport company will be able to hold two consecutive reduced rest periods if the driver, within the four-week reference period, holds two regular weekly rest periods. The reduced weekly rest periods held by the driver in week one and two must be compensated for during the first of the subsequent regular weekly rest periods.

In accordance with the case-law of the Court of Justice of the European Union, the Mobility Package will establish that regular weekly rest periods and other rest periods of more than 45 hours cannot be taken in the vehicle's cab. More controversially, the Mobility Package will impose on the transport companies that drivers – at least every four weeks – return to their state of residence or to the employer's operational centre in the state of establishment for the purpose of taking a regular weekly rest. As regards international drivers who have taken two reduced weekly rests, the transport companies are required to ensure that drivers, at the latest before the third and prolonged weekly rest period during the reference period, return to a member state or operational centre of the state of establishment.

According to the comments of the Mobility Package, it is intended that there may be some synchronisation of the undertakings' obligation to ensuring the return of drivers and vehicles every four and eight weeks, respectively, by allowing the driver in every two four-week reference period to return the vehicle to the operational centre where the driver also takes the regular weekly rest.

When the Mobility Package commences, drivers and transport companies operating vehicles in

the 2.5 - 3.5 tonnes weight class will be subject to the rules on driving and rest periods.

Finally, by the end of 2024, the Commission is to prepare a report on the availability of parking areas and safe rest areas in the EU.

POSTING OF DRIVERS

So far, the general understanding has been that the general rules of the Posting of Workers Directive do not apply to international drivers. These drivers often cross many national borders in carrying out their work, why the drivers' work typically cannot be attributed to one particular country.

If the Mobility Package is adopted, a set of new sector-specific rules on the posting of drivers will be introduced. According to the EU regulatory institutions, the purpose of the rules is to ensure undertakings' access to provide cross-border road transport services while ensuring satisfactory working conditions and social protection for drivers, who perform the cross-border transport services.

The new rules on posted drivers are based on a principle of "sufficient link" or adequate connection between drivers and the territory where drivers are and carry out their work. Based on this view, the various transport services have been categorised, and it has been established when drivers' connection to a Member State is sufficient to ensure that the driver will enjoy the protection of the rules of the Posting of Workers Directive.

The categorisation implies that drivers driving cabotage, cross trade and the road part of combined transport will be considered posted drivers. Bilateral transports and transit, where the driver either starts or ends a transport in the employer's country of establishment, are exempt.

COMMENCEMENT

Some of the new rules will apply immediately after the possible adoption of the Council of Ministers and the European Parliament.

This applies, among others, to the new rules on driving and rest periods, which will enter into force 20 days after publication in the Official Journal of the European Union.

The new waiting period after cabotage and the posting rules for drivers will not commence until 18 months after the relevant rules of regulations enter into force. The extension of the control period and the obligation to install the new smart tachograph – which has not yet been fully developed – will not be relevant until 2024.

OF MAJOR IMPORTANCE TO THE TRANSPORT INDUSTRY

The amended and new rules will have direct and noticeable consequences for hauliers providing cross-border transport services. However, the new reality for hauliers will, in all likelihood have a spillover effect on the price level throughout the logistics chain. The European transport and logistics industry will, therefore, get a different look in the future if the Mobility Package is finally adopted and implemented as expected.

NEW DRIVING PATTERNS AND HIGH ADMINISTRATIVE BURDENS ON TRANSPORT COMPANIES

The interplay between the new rules for a waiting period in connection with cabotage, the return of the vehicle, and the drivers' regular weekly rest and returning to their residence or the company's operational centre will change many of the driving patterns that transport companies engaged in international haulage, operate by today. The posting rules will impact the cost of international haulage for the transport companies.

When the rules of the Mobility Package were prepared, the EU legislative institutions acknowledged that it should be easier for companies to have access to specific national

rules in other states where to and in which they may provide transport services under the rules of EU law. In other words, companies must be assured where and under what conditions they can offer transport services outside the Member State in which they are established without heavy and cumbersome administrative burdens. However, it is to be expected that the new sector-specific rules on posting, in particular, will require considerable resources and additional administrative work for companies providing international transport services.

The implementation of the new rules is in practice linked to the introduction of the new "smart tachograph", which must be able to register, among other things, each time vehicles cross borders. This will help both transport companies and authorities monitor compliance with the complex new rules on cabotage, waiting period, and posting. Therefore, it will also be exciting to see if the new tachograph will be fully developed and ready for use by 2024, when, according to the Mobility Package, transport companies will be obliged to install them in their vehicles.

INCREASED FOCUS ON CHAIN LIABILITY IN THE LOGISTICS CHAIN

In line with the trend that is already seen in many Member States, the focus will in the future be on co-liability for freight forwarders and other partners when hauliers commit breaches of cabotage rules.

In Denmark, the public authorities are already actively pursuing freight forwarders for their role in the logistics chain in relation to cabotage and other rules of public law under the general provision for complicity in Section 23 of the Criminal Code. An example of this is a judgment handed down by the Western High Court in 2018, in which a freight forwarder was found to be contributing to the cabotage offences committed by a haulier belonging to the same group of companies.

> [Read our comments on the judgement here](#)



MORE INITIATIVES UNDERWAY

NEED FOR CLARIFYING RULES FOR THE ROAD TRANSPORT INDUSTRY – HAS IT BEEN SUCCESSFUL?

The existing EU regulation of the road transport industry is unclear in several crucial areas where the Member States, to a large extent, have been able to adopt different interpretations of the rules. This has led to divergent legal positions and enforcement of the rules. Therefore, one of the main objectives of the Mobility Package has also been to achieve harmonisation and simplification of the rules governing the occupation of road transport operators in the EU.

Time will show how the new rules will be implemented and enforced in the Member States. Already, we can see, however, that several of the new measures can be interpreted ambiguously. Also, the Mobility Package does not clarify the interpretation of the trip concept of the cabotage rules, which is currently interpreted very differently across the European Union. In 2018, the unclear cabotage rules led to an acquittal of Denmark before the Court of Justice of the European Union in a case brought by the Commission. The Commission considered that the Danish restriction on either several loading or unloading locations in connection with cabotage operations in Denmark was contrary to EU law. However, the Danish interpretation of the concept of a trip and the other divergent interpretations of cabotage rules are likely to be maintained – even after the new Mobility Package has entered into force.

> [Read about the Commission's case against Denmark and the different interpretations of cabotage rules](#)

A SHOWDOWN WITH EU LAW'S FUNDAMENTAL PRINCIPLES OF THE FREE MOVEMENT?

The Mobility Package draws a line for the balancing act between companies' access to provide cross-border road transport services while ensuring satisfactory working conditions and social protection for drivers. This weighing of considerations has been the subject of extensive

debate and negotiations which now finally seem to have come to an end.

The outcome of the negotiations of recent years shows a clear signal that the fundamental principles of EU law on the free movement of workers and the freedom to provide services are challenged by new social measures.

EVEN MORE INITIATIVES UNDERWAY

Currently, work is underway to implement new EU rules on social security, which could end up having a significant impact on the road transport industry if the proposed rules on the posting of drivers are implemented as planned.

Last week, the Danish parliament took the lead on the implementation of the Mobility Package with the adoption of a political agreement to ensure equal conditions for all drivers in Denmark – regardless of whether a Danish or foreign haulier employs them.

> [Our comments on the new Danish agreement](#)

TRANSPORT COMPANIES ARE STARTING PREPARATIONS NOW

It will be more challenging to provide cross-border transport services in the EU when the new Mobility Package enters into force. Many transport companies will have to apply new lines of thinking when they consider the tasks they can take on, and not least the price they must ask for these services.

It is also to be expected that road transport in the EU will become more local, which can provide an advantage to those countries that are centrally located between several large and economically strong Member States.

At present, it is mainly the driving and rest periods that are knocking on the door. The rules will enter into force 20 days after publication in the Official Journal of the European Union and the rules are expected to be voted through over the next few months. Therefore, any transport company should start to prepare a plan for how to handle this part of the Mobility Package.

SEMINAR

GDPR AND COMPLIANCE FOR THE TRANSPORT INDUSTRY



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The GDPR came into force in May 2018, and since then, we have seen several decisions which means that now is an excellent time to get updated on GDPR and compliance in the transport industry.

That is why NJORD, with Ulla Fabricius and Niels-Peter Kjølbye as hosts, will hold a new seminar on Tuesday, 28 January 2020, where companies in the transport industry can get updated on the latest case law and share their experiences.

In addition, Ulla will give a presentation on INCOTERMS 2020, which only recently entered into force at the turn of the year. Ulla led the Danish ICC group and will address the main changes to be aware of.

The seminar is a network meeting for companies in the transport industry that are regularly kept up to date on GDPR and compliance.



THE AVIATION INDUSTRY EVER INCREASING DEMANDS BY AIR PASSENGERS

In this post, we are briefly looking at the aviation industry and how to try to limit the ever-increasing demands on airlines for compensation for delays from passengers and, not least, their representatives – the "ambulance chasers"; the new industry living the good life of aviation.



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All airports in Denmark are heavily unionized so both individual employment and collective bargaining issues always impact any business dealing directly or indirectly with the Copenhagen - and any other airport in Denmark.

COMPENSATION FOR PASSENGERS WITHIN THE EU

That said, one of the legal areas in the airline field that over the last year caused increased concern and calls for attention is the regime around passenger claims for compensation in the event of denied boarding, cancellation, or long delay of flights.

The EU Regulation 261/2004 has since February 11, 2004 established common rules on

compensation and assistance to passengers in the event of denied boarding, cancellation, or long delay of flights. The Regulation covers all air carriers registered within the EU. However, air carriers registered outside of the EU are also obligated to comply with the Regulation if they fly from an airport within the EU. An EU Regulation is directly applicable in all member states of the EU.

THE EMERGENCE OF "CLAIM FARMERS"

Through the Regulation legislator has in practical terms paved the ground for an indirectly state aided industry of so-called 'claim farmers', which have developed to become a nightmare for airlines and today one of the significant variable financial threats to airline profitability together

NJORD'S AIRLINE INDUSTRY SECTION

At NJORD we work with all aspects of airline related advice and dispute – aircraft and helicopter leasing and financing, airline operational issues, ground handling from airline catering to concession holders in the ever-developing shopping and service environment of the Copenhagen Airport.



with other more traditional ones like increase of fuel costs etc.

Even though the passengers are encouraged to contact the airline in the event of denied boarding, cancellation, or long delay, many passengers find it easier to have the 'claim farmers' represent them and file the claim on their behalf. The 'claim-farmers', by now well-developed legal tech companies operating on no-cure no-pay basis, which would not be allowed for law firms, have made a successful business from the Regulation.

As a result, the airlines have experienced increasing numbers of court cases raised against them for compensation for cancellation or flight delays to the extent that the Copenhagen City Court has established a section only for flight compensation cases. Presently, the Copenhagen City Court handles more than 6.000 court cases a year and this number is only increasing.

CALL FOR DIALOGUE BEFORE LEGAL ACTION

The main driver for the 'claim-farmers' often unnecessarily using the courts to file their claims for compensation is to be awarded legal costs and collection charges from the airlines as part of their business model to increase their profits. The City Court, at a recent meeting for all players in the process, encouraged the representatives of the passengers, including the 'claim farmers', to seek better dialogue with the airlines before raising their claims before the court, since the court found that most cases were being unnecessarily processed before the court.

AVOID UNJUSTIFIED CLAIMS OF COMPENSATION

At NJORD we represent a significant number of airlines and we are constantly improving and streamlining our handling of the court cases to limit the damage and loss to the airlines. One of our focus areas is seeking to avoid that the

'claim-farmers' be granted legal costs or collection charges, if a case was unnecessarily processed before the courts. In some cases, we have even taken the City Court decisions to the higher court in order to have the questions regarding legal costs and collection charges tried there.

Through constant challenge of both the justification for the claims for compensation themselves, when legally sensible, and the legal grounds for allocation of legal costs and collection charges we achieve significant control and reduction of the claims against the airlines. This means that the airlines only have to pay compensation, if the airline is specifically obligated to do so according to the Regulation under the concrete circumstances, while the airline then save thousands of euros in unjustified claims for compensation, legal costs, and collection charges.

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