

October 2019

QUARTERLY UPDATE

Maritime and Transport Law

NJORD
LAW FIRM

ULLA FABRICIUS

INCOTERMS 2020 – what's new?

INCOTERMS 2020 were recently published, and the revised rules will enter into force at the end of the year, and thus replace the 2010 version. So now it is time to take the opportunity to review the terms of sales and delivery!



Written by Ulla Fabricius, Attorney at law and Partner at NJORD Law Firm and head of the Danish ICC group.

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Revising the INCOTERMS 2010 version has been a long process, as we in the ICC must debate and agree on changes and adjustments on a global scale. I have led the Danish ICC group consisting of skilled representatives of the trade, transport and banking industry. Many suggestions for changes and additions were debated in the process towards what was the result; INCOTERMS 2020.

CHANGES YOU SHOULD BE AWARE OF

At first glance, you may think that there are not many changes – and that is also true if you only look at whether clauses have been removed or new ones have been added. However, the changes which have been made are important. Below I have briefly indicated the most significant changes:

- Increased focus on security obligations and the cost of compliance with safety requirements added to A4/A7 and A9/B9.
- More flexibility in relation to the drawing of transport insurance policies for different types of goods – container/bulk – in connection with CIF and CIP.
- Response to the need for an onboard bill of lading to be used for sales on FCA terms where a letter of credit is also possible.
- Use of the seller's/buyer's means of transport under FCA, DAP, DPU, and DDP.

- DAT has been changed to DPU (Delivered at Place Unloaded), underlining that delivery can not only take place at terminal. DAP is also moved up in front of DAT, as delivery takes place before unloading.



CLARITY TO REDUCE MISINTERPRETATIONS

The actual setup and comments to the rules are made more manageable and more transparent. The aim of this is to reduce the incorrect use of individual clauses and to encourage the application of the newer rules that have been added to meet the demands of more modern trade and transport.

It is also important to emphasize that, in INCOTERMS 2020, we have taken the explicit stance that VGM is not a relationship that needs to be regulated in INCOTERMS.

Update your business on the new rules

It is important always to have up-to-date sales and delivery terms that establish and allocate rights, costs and obligations in the way that you want – and for which you are also insured!

If you need a review, call us and get an offer for a review.

In cooperation with the ICC Denmark, I will also conduct a series of seminars around the country and at companies requesting a seminar/course.

> [Buy the new INCOTERMS 2020 rules here](#)



TOP 5

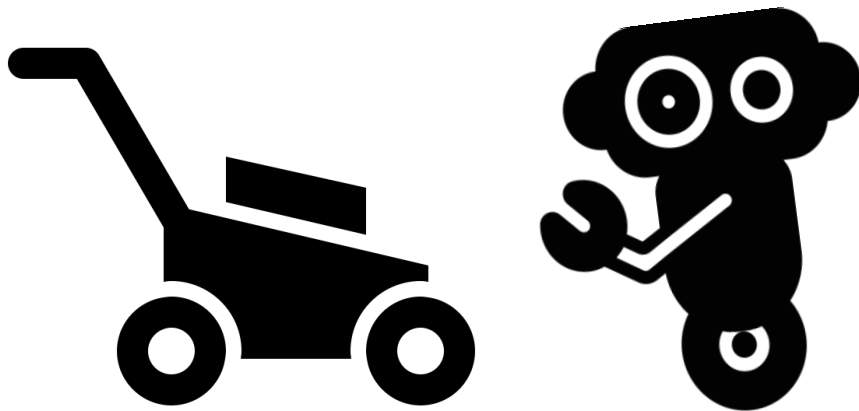
MOST READ UPDATES

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

1. [Decision rendered by the Danish Maritime and Commercial High Court regarding a Danish transport company and a Bulgarian carrier](#)
2. [Decision from the Western High Court: Dismissal of a claim against liable contracting carrier](#)
3. [Case about gross negligence settled by the Maritime and Commercial Court](#)
4. [Law suit brought in the wrong jurisdiction may lead to the claim being time barred](#)
5. [New case-law regarding lengthy processing time in cases on driving and resting time](#)



NJORD LAW FIRM NEW TECH



Section 3.0

A robot lawnmower has cut off the neighbour's foot! Who is liable?

Watch the latest video in our NewTech series where Steffen Hebsgaard Muff gives you the answer.



UPDATE

Claim against a liable carrier was dismissed due to the lack of sufficient documentation for an economic loss.

Two decisions by the Eastern and Western High Court are examples of decisions in which the claim against the liable contracting carriers are dismissed because the counterparty cannot prove the loss sufficiently. Those were the decisions, even though the courts in the same decisions held that the contracting carriers were liable for the damage to the goods. The decisions are worth noting because the courts usually go to great lengths to estimate what the loss might be – but this is where the national courts draw a line.

THE CLAIM OF THE SPOILED MEAT

The claim concerns the transport of fresh beef from a slaughterhouse in Aarhus to two recipients in Turkey; Istanbul and Bursa, respectively. The seller entered into an agreement on the transports with the contracting carrier. The transports were carried out by the haulier from Romania.

The interesting thing about the claim concerns the meat transported to Bursa. Here the Turkish veterinary authorities carried out a sample control which classified the meat as being "of lower value" and "not suitable for normal dispatch and consumption".

Based on pictures from the sample control, a discretionary officer concluded that the meat was spoiled. In light of the previous, the High Court concluded that it without a doubt could be considered that the meat was spoiled on arrival and that this damage had occurred during transport. The High Court then held that the contracting carrier was liable for the damage under paragraph 24(1) of the CMR Act, but that the burden of proof for

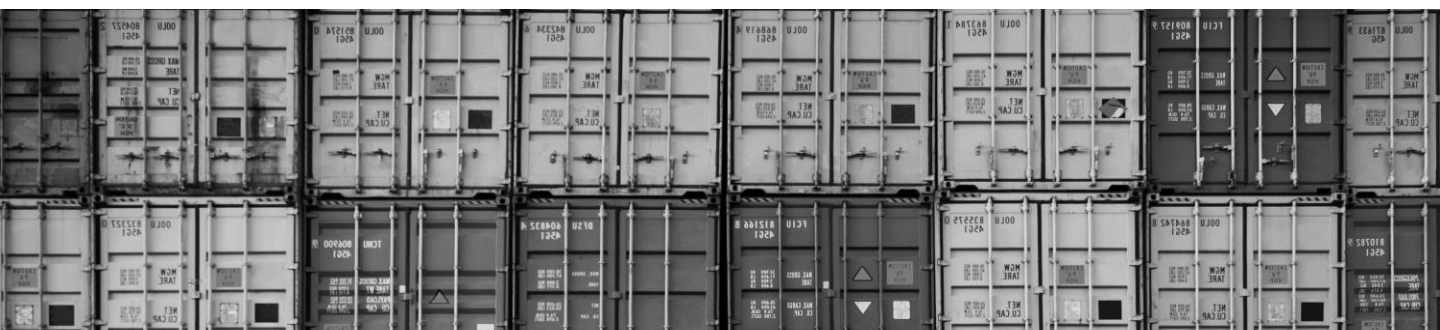
the magnitude of the loss was on the seller (who was subrogated to the claim).

This burden of proof was not satisfied solely by the submission of the sample control performed by the veterinary authorities and the report of the experts, as there was no evidence of what had been done to the meat, why a majority of the judges of the court dismissed the claim against the carrier.

In the explanation, the majority of the court held, among other things, that it had not been proven that the deterioration of the meat constituted the amount requested in the claim and that there was insufficient evidence to determine discretionary impairment of the delivery.

The minority of the High Court held that it without a doubt could be considered to establish a discretionary compensation, as both the sample control and the report from the experts showed that the meat was spoiled to such an extent that the loss would amount to 50% of the sales price of the goods.

The claim against the contracting carrier was dismissed following the views of the majority.



THE CLAIM OF THE DAMAGED MACHINE

This claim concerned the transport of a machine from the seller in Denmark to the buyer in Switzerland. The seller entered into an agreement with the contracting carrier who also, in this claim, sub-contracted the transport. However, during the unloading in Switzerland, it was clear that parts of the machine had been damaged.

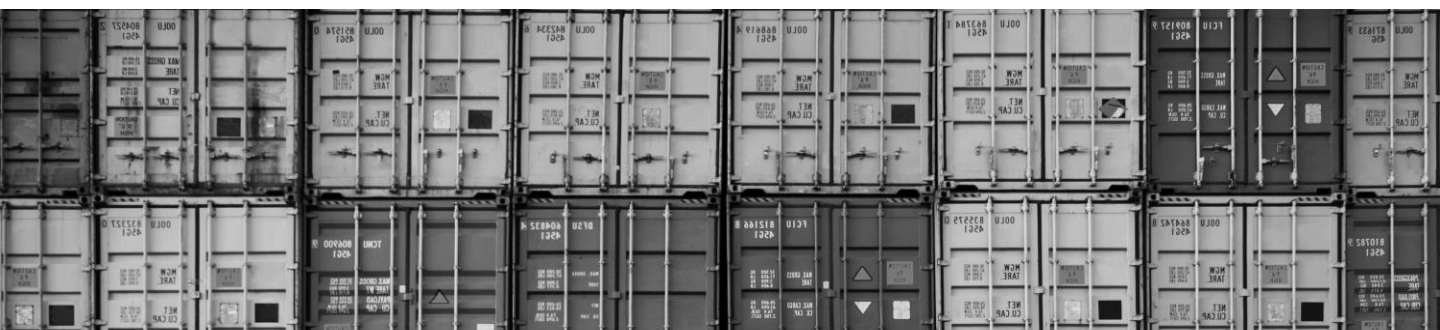
Like the claim of the spoiled meat, the Maritime and Commercial Court found that the damage had occurred during transport. Based on those circumstances, the Court held that the contracting carrier was liable for the damages under paragraph 24 (1) of the CMR Act. Also, in this claim, however, the burden of proof for the loss was on the counterparty. In that regard, the Maritime and Commercial Court held that the limitation of liability under paragraph 31, cf. 29(2) of the CMR Act was to be calculated based on the weight of the damaged parts and not the total weight of the machine. However, the counterparty had only submitted information on the total weight of the machine - not the weight of the individual damaged parts. Thus, the magnitude of the loss had not been substantiated. Therefore, the Maritime and Commercial Court dismissed the claim against the contracting carrier.

The claim was appealed to the Eastern High Court, who upheld the decision of the Maritime and Commercial Court. The High Court also

considered that parts of the machine had been damaged during transport. However, based on additional testimony, the court held that it could not be ruled out that the damage to the machine had occurred during the loading and that it was thus unclear to what extent the damage had occurred during transport or during the loading. Because of this, as well as the decision of the Maritime and Commercial Court, the High Court found that the claim was not sufficiently substantiated. And so the High Court also dismissed the claim against the contracting carrier.

THE IMPORTANCE OF DECISIONS

The two decisions have in common that the contracting carrier is liable under paragraph 24 of the CMR Act for damage to the goods, as in both claims the damage occurs during the transport. However, in both decisions, the High Courts dismiss the claims against the contracting carrier as a result of the lack of evidence of the magnitude of the loss by the counterparties, instead of determining the losses by discretion. The Eastern High Court also adds in the claim of the damaged machine that the claim was not considered to have been established, as it could not be clarified to what extent the damage had occurred during transport or during loading. With these decisions, the High Courts, thus, set a limit on how far they will go to assess what a loss might be.



ULLA FABRICIUS

Update on the mobility package

The EU mobility package has gradually been underway since spring 2017; it still is. NJORD Law Firm continuously monitors the progress and provides a status of what has happened since we last wrote about the mobility package and what the future holds.



Written by Ulla Fabricius, Attorney at law and Partner at NJORD Law Firm and head of the Danish ICC group.

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WHERE DID WE LEAVE THE MOBILITY PACKAGE IN JULY?

The last time we wrote about the mobility package was in our quarterly update in July, where elections for the Danish Parliament and European Parliament had just been held. Both elections were of great importance for the transport industry and not least the mobility package.

Benny Engelbrecht (S), who was appointed Minister for Transport after the Danish election, has stated that the mobility package is central to the future of the road transport sector. It is also the minister's view that both the European Parliament's and Council's agreements contain a lot of useful elements which can help to ensure decent working conditions for drivers and fair competition in the road transport sector. We look forward to following the objectives and visions of the new minister in the area of transport.

Even though the mobility package has been in the pipeline for a long time, it was not finally adopted by the previous European Parliament and Commission. When the election campaign commenced, the work was put on hold and further progress, therefore, had to await the new European Parliament.

WHAT IS THE STATUS OF THE MOBILITY PACKAGE NOW?

We are now on the other side of both elections and the summer. Therefore, it is soon time for both the new Danish Parliament and the European Parliament to pull up the sleeves and get to work. As "social dumping" was a significant issue in the European election in the spring, we expect the mobility package to be quickly put on the agenda, as "social dumping" is one of the core issues to be addressed by the mobility package.



In Denmark, the Ministry of Transport recently hosted the sixth meeting of the Road Transport Alliance. In January 2017, Denmark was part of the founding of this alliance with several like-minded countries. Today, eleven countries share a goal of prioritising road safety, ensuring fair competition in the road transport sector, and improving the social conditions for drivers. The purpose of the sixth meeting, which was held in Denmark, was to prepare for the forthcoming negotiations so that the alliance continues to be unified and strong.

Similarly, seven Eastern European countries have also formed an alliance just as the Road Transport Alliance. In contrast to the Road Transport Alliance, their general opinion is that the rules of the mobility package are an example of protectionist policies disguised as policies aiming to ensure social rights and that this is simply intended to stop Eastern European companies from competing on equal terms with western European companies. Mr Peter Kouroumbashev, a Bulgarian socialist MEP, has said:

"I have the feeling that if companies from big countries do business in Eastern Europe, it is called a free

market. If Eastern European companies do business in the West, it is unfair competition and social dumping".

This is a position shared by many other Eastern European countries.

WHAT DOES THE FUTURE HOLD FOR THE MOBILITY PACKAGE?

The next step for the mobility package is the trilogue negotiations between the Council of Ministers, the European Parliament and the Commission, where they must agree on the final legislative text on posting, cabotage, and driving and rest periods. On 24 September, the European Parliament's Transport Committee delivered the mandate for these negotiations to proceed.

The trilogue negotiations must be completed by 1 November, when the new Commission begins work. If this is not achieved, all previous legislative proposals lapse. Hopefully, the negotiations can be concluded before the new Commission begins so that we can soon see an end to the long legislative process and the mobility package can become a reality.



ROOFTOP EVENT

Young CMI Friday Bar

Friday, 18 October, NJORD Law Firm hosted the Young CMI's Friday Bar on our rooftop terrace in the heart of Copenhagen.

Christian Schaap, who is on the board of Young CMI, was in charge of the event, which was a great success.

Thank you to everyone who came and shared their passion for shipping and transport.

YOUNG CMI

Young CMI is a subsidiary of the National Maritime Law Associations for Younger lawyers.

Young CMI organises both social and professional events for its members, including events with sister associations abroad.

Membership

Visit [Young CMI's website](#)

NJORD
LAW FIRM



ULLA FABRICIUS

BEST FEMALE LAWYER IN SHIPPING

We are incredibly proud that Ulla Fabricius, again this year, has been appointed as Denmark's leading female lawyer in according to [Experts Guides' list](#).



ULLA FABRICIUS

Attorney at law and Partner, NJORD Law Firm.

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*"It is a great recognition.
I am very honoured to be appointed
again and be in the company of so many
skilled female lawyers."*

- Ulla Fabricius

essential that there is a list like this highlighting women and making female role models visible.

"I did not have any female career role models when I was young and having role models is important.."

- Ulla Fabricius

FOCUS ON WOMEN IN A MALE-DOMINATED INDUSTRY

The legal industry as a whole, but especially also shipping- and transport law as an area, is mostly dominated by men. Therefore, for Ulla it is

We are proud that NJORD Law Firm's Maritime and Transport Law team is led by the country's most skilled female attorney in this area.

Congratulations, Ulla!

UPDATE

EMPLOYEE NEWS

What else is new with the Maritime and Transport Law team?

We can announce that Christian Benedictsens-Nislev resigned from his position at NJORD Law Firm at the end of October.

As of 1 November 2019, Anders Storm Runge began as a legal assistant in our team working with transport law.

We wish Christian Benedictsens-Nislev the best of luck in the future and look forward to welcoming Anders Storm Runge.

CONGRATULATIONS

EXAMS TO BECOME ATTORNEY AT LAW PASSED

Both Marie Steen Mikkelsen and Guðrún Olsen passed the written examination to become attorney at law, which was held in June. Both are now looking forward to being admitted to the bar as attorneys at law in September 2020.



MARIE MIKKELSEN

Assistant attorney, NJORD Law Firm.

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Marie has been an assistant attorney with NJORD Law Firm's Maritime and Transport Law team since 2017. Marie is primarily involved in maritime and transport law and was elected to the board of The Women's International Shipping and Trading Association earlier this year.

Marie looks forward to assuming more responsibility at NJORD Law Firm, where several legal actions await. She is passionate about going to court and, therefore, looks forward to her everyday life consisting of several court proceedings.



GUÐRÚN OLSEN

Assistant attorney, NJORD Law Firm

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Guðrún has been a legal assistant and later assistant attorney at NJORD Law Firm since 2015. Guðrún is already an Icelandic attorney at law and welcomes the fact that she will soon be a Danish attorney at law. Since Guðrún was 15 years old, she has dreamed of becoming an attorney at law. She is passionate about pleading for her case and be right. A major goal in the career of Guðrún is to plead a case before the Court of Justice of the EU.

At NJORD Law Firm, Guðrún works closely with Thomas Ryhl, one of Denmark's leading attorneys at law, who has pleaded and won several cases before the CJEU.

"I feel fortunate to have the opportunity to work with both Thomas Ryhl and Ulla Fabricius. They are good at professional sparring, they support

me in my efforts to accomplish my goals, and they are just wonderful, pleasant people who are good at sharing their knowledge with others."

- Guðrún Olsen

When Guðrún left Iceland to go to Denmark, she did not know of any Danish law offices, but she is pleased that she found the position at NJORD Law Firm.

"I have been very well received. Everyone is very passionate, and from the beginning, I have been given a lot of responsibility and exciting tasks. NJORD Law Firm is an international law firm with very many nationalities, so I feel that I fit in perfectly."

- Guðrún Olsen



ANDERS WORSØE

PARTNER SPECIALIZING IN (AMONG OTHERS) AIR TRANSPORT

In March, we welcomed Anders Worsøe, who joined NJORD Law Firm as a partner and moved into the office in Copenhagen.

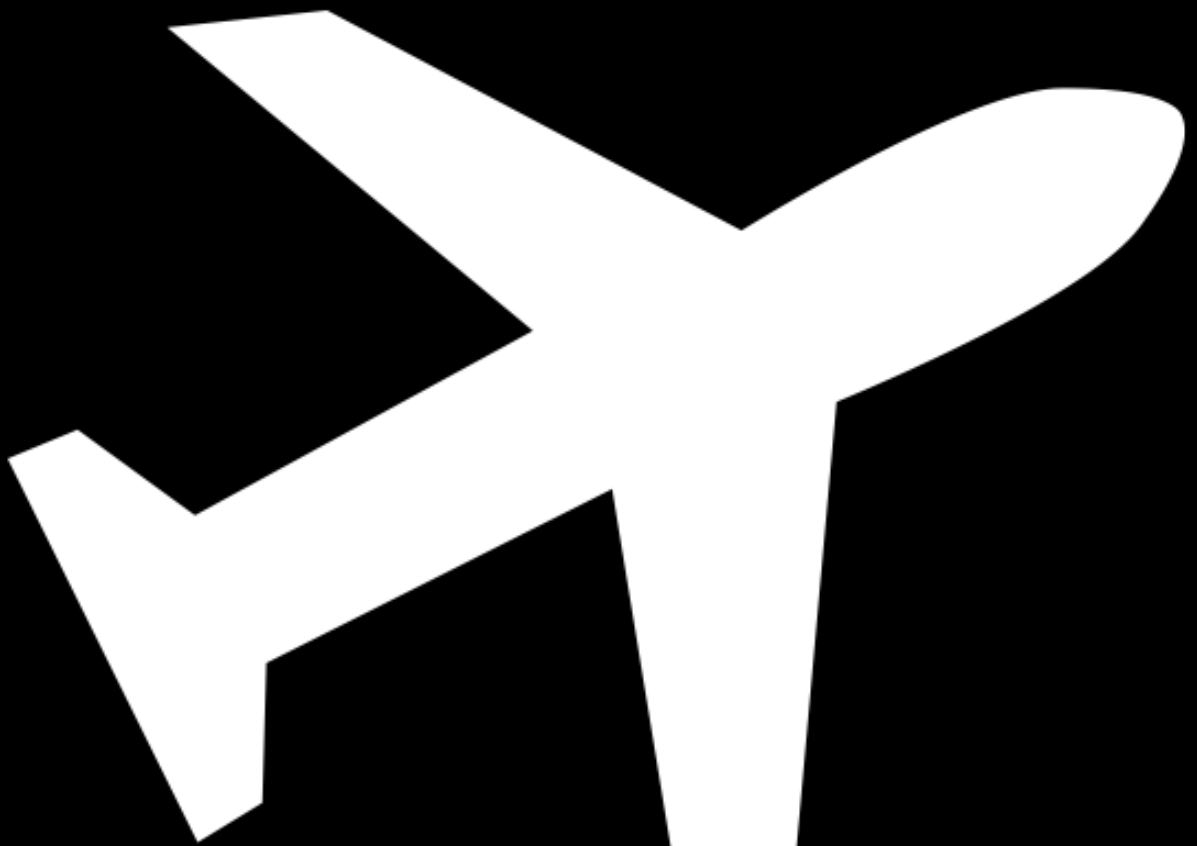
Anders has more than 30 years of experience advising the air transport industry. Among other things, he has worked with airlines, aircraft financing, airline catering, and other matters relating to the handling of airports.

LAW, PROCUREMENT AND LOGISTICS

Anders Worsøe started his career at SAS Service Partner in Saudi Arabia and later in Denmark, where he was responsible for procurement and logistics. Therefore, he has an in-depth knowledge of the aerospace industry and serves as a competent partner for professional sparring.

Together with Anders, assistant attorney Johanne Hansted began NJORD Law Firm's air transport department. Before that, Johanne worked as an assistant attorney for Anders at Magnusson Law Firm, where she worked primarily with air transport. Also, Johanne handles matters related to employment and labour law and company law. Johanne has previously worked at Krifa, where she worked with employment and labour law and at ATP, where she handled insurance and pension.

We are delighted to welcome Anders and Johanne, and thus extend and strengthen the expertise of NJORD Law Firm in the area of transport law.





NEW SECRETARY IN THE TEAM



LISELOTTE RIGSTRUP

Secretary, NJORD Law Firm.

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In July, NJORD Law Firm welcomed Liselotte Rigstrup. When Lise Lotte saw the vacant position as a secretary at NJORD, she had to apply.

"NJORD Law Firm has an excellent reputation, and I have also only heard good things about NJORD as a workplace."

- Liselotte Rigstrup

At the same time, Liselotte saw it as an exciting opportunity to become part of a law firm,

where great diversity is found because colleagues come from many different countries.

"Now it is not only the clients who are international, but also my colleagues. It is exciting to be part of this."

- Liselotte Rigstrup

We are very pleased to welcome Liselotte.

ADMITTED TO THE BAR



CHRISTIAN SCHAAP

Attorney at law, NJORD Law Firm.

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In September, Christian Schaap could celebrate his new title as an attorney at law as he was admitted to the bar. In March, he passed the practical bar exam by pleading a case before the Danish Maritime and Commercial Court.

WHAT WILL THE FUTURE BRING NOW?

Christian continues at NJORD Law Firm as an attorney at law in the Maritime and Transport Law team, where he will continue to work on the same types of cases he has done up until now.

"My career goal remains the same: to become as good an adviser as possible within maritime and transport law. "

- Christian Schaap

The next step for Christian is a QLTS test (Qualified Lawyer Transferring Scheme). By passing this test, Christian will become an English solicitor.

"Becoming an English solicitor will broaden my opportunities as an advisor within the maritime law, where a large number of agreements are governed by English law."

- Christian Schaap

Thus, the dream of a secondment in England, where Christian also studied his master's degree in maritime law, can become a reality.

We want to congratulate Christian on his new title!

NJORD Law Firm
Maritime and Transport Team

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