

Market
Intelligence

SHIPPING 2022

Global interview panel led by MFB Solicitors



LEXOLOGY

Getting the Deal Through

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Norway

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Marte Roen is a senior lawyer working in Kvale's ocean and energy department. Marte specialises in contractual issues, including shipbuilding contracts, supply contracts, charterparties and EPC(I) contract. She has close to 10 years of experience from the maritime sector, having worked both in-house as a claims executive in a large marine insurance company and in private practice. Marte holds an Executive MBA in shipping and logistics (the Blue MBA) from Copenhagen Business School. She is also a contributing author of the book *Oil and Gas Activities in Norway. Regulatory and Contractual Framework*, published in 2021. Marte is a member of the JUS professional committee for shipping and offshore and has previously been a board member and chair of Young CMI – Norway.

1 | What is the current state of the shipping industry in your country?

Norway is still regarded as a leading nation in the shipping industry. The Norwegian fleet is considered the fifth most valuable in the world, only surpassed by China, Greece, Japan and Germany. The fleet is dominated by offshore service vessels, closely followed by gas carriers. Norway offers a highly stable and favourable regulatory framework. The Norwegian International Ship Registry and the Norwegian tonnage tax regime are among the decisive factors that make Norway a favoured shipping nation.

The Norwegian-controlled fleet comprises 1,690 ships with a total tonnage of 46.9 million deadweight tonnes. There has been a slight decrease in the number of ships over the past two years, with the most significant reduction being the offshore service segment, which now consists of 50 fewer ships. This is opposite to the overall trend in the Norwegian controlled fleet, which in 2019 saw an increase of 9 per cent measured in gross tonnage.

The average age of the Norwegian fleet continues to drop, and the Norwegian shipowners are highly focused on developing environmentally friendly solutions and autonomous navigation systems. There is a strong belief in the market that the emphasis on technology development will give Norway as a shipping nation a robust competitive advantage within the international sphere.

The Norwegian shipping industry has the ambition to become climate-neutral by 2050, and from 2030 Norwegian shipping companies will only order ships based on zero-emission technology. According to the Norwegian Shipowners' Association's Maritime Outlook 2022, more than 90 per cent of shipping companies say that they believe they will be climate-neutral by 2050, in line with the Norwegian Shipowners' Association's climate strategy.

Norway hosts several international leading societies of companies that design, build, operate and sell ships and supply equipment and services to the industry. This includes business services where several Norwegian companies are leaders in maritime financial, legal, and engineering services. DNB and Nordea are key debt-finance providers within the industry, and DNV has a world-leading position as a classification society and adviser. Furthermore, key marine insurers such as Gard, Skuld, Norwegian Hull Club and the Norwegian Shipowners' Mutual War Risk Insurance Association are also located in Norway. Close to 82,500 employed in the Norwegian industry contributed to the value creation of 114 billion Norwegian kroner in 2021.

Russia's invasion of Ukraine on 24 February 2022 created overnight security concerns in Europe and has had a substantial impact on the current state of the



shipping industry. Some aspects of the effects of the war on Ukraine will be further elaborated on in questions 2, 3 and 4.

- 2 | What are the prevailing shipping market trends affecting your country? What has been the impact of the covid-19 pandemic?

The Norwegian shipping industry has seen a collective movement towards greener alternatives to meet the goal of a zero environmental impact national fleet before 2050. High investment costs, lack of adapted infrastructure on land and the current price of alternative fuel are still considered the main obstacles. Implementing a CO2 fund to create incentives for developing green technology in the shipping sector has been suggested as the next step to reaching the goals within 2050. Ammonia has shown promise as an alternative fuel and is now regarded as the most relevant alternative to traditional fossil fuels by Norwegian shipowners. Several projects have been initiated to implement ammonium-driven engines in operational ships, such as *Viking Energy*, which is scheduled to have a new ammonia system installed in 2024.

Towards the end of 2021 and the beginning of 2022, we saw a gradual relief in the covid-19-related restrictions worldwide. This sparked a growing demand for goods in several sectors, which positively impacted the shipping industry. There are indications from the World Bank and International Monetary Fund that we will see a steady growth into a possible future rebalancing, from the heavy hits that the industry endured during the height of the covid-19 pandemic, to post covid-19 peaks in 2022 and beyond.

The covid-19 pandemic has also caused significant operational challenges for the Norwegian fleet. According to the Norwegian Shipowners' Association's Maritime Outlook 2022, three out of four shipowners in Norway state that covid-19 restrictions made for considerable operational challenges throughout 2021. A predominance of Norwegian shipowners still assumes that covid-19 restrictions will cause some operational challenges throughout 2022 internationally. It is worth noting in this context that, since April 2022, the Norwegian government has approached the pandemic with a high level of preparedness and close monitoring of infection rates. This has led to most of the covid-19 restrictions in Norway being lifted.

Russia's invasion of Ukraine severely affects the global security situation, the world economy and supply chains. However, the effect of the crisis remains unclear. The EU's sanctions have caused considerable economic restrictions regarding conducting payments to Russian companies. This has, among other things, created a shift in demand for alternative suppliers of commodities and goods that usually originated from the Russian market, leading to some instability in the bulk shipping segment. The invasion has also caused a surge in the price of oil.

The EU's sanction lists are incorporated into Norwegian law. The sanction lists are continuously updated, and many international companies must also adhere to additional sanctions, such as the UK and the OFAC (US) lists. This creates a demanding know-your-customer regime, which the shipping sector will have to adhere to in part or entirely to avoid breach and criminal liability. Norway's implementation of the EU sanction list is covered in more detail in question 4.

3 | Are there any recent domestic or international political or legislative developments that may have an impact on your country's shipping market?

After the Norwegian parliamentary election in 2021, Norway got a new Labour Party-led government. The government's political platform states that the government, together with the industry, will ensure that the development of low and zero-emission shipping contributes to reducing global emissions. The new minister responsible for the maritime sector has announced that the government has started

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work on a restructuring package for climate-friendly shipping. The goal is to retain Norway's leading role in the green shift of the maritime industry.

The Transparency Act entered into force in Norway on 1 July 2022, following a general trend of legislating social responsibility. The Transparency Act is based on OECD Guidelines for Multinational Enterprises and requires enterprises to conduct due diligence related to fundamental human rights and decent working conditions within the enterprise, its supply chain and its business partners. It will also impose an obligation to make an account of the due diligence assessments performed by the enterprises, as well as giving 'any person' the right to information from an enterprise regarding how the enterprise addresses actual and potential adverse impacts according to the enterprise's due diligence. The Transparency Act will be particularly relevant for the shipping industry, where the supply chains are often complex and global.

The Norwegian government has proposed a bill setting out requirements for Norwegian pay and working conditions on Norwegian International Ship Register (NIS) and foreign-flagged vessels in Norwegian waters and on the Norwegian continental shelf. The bill proposes, as the main rule, that ships sailing between Norwegian harbours must have Norwegian wages and labour rights for their crew. This rule will also apply for ships operating on the Norwegian continental shelf or in Norway's economic zone for at least 30 days or when the ships' total presence in the economic zone or on the continental shelf exceeds three months in a 12-month period if the ships participate in construction, operation or use of installations. The proposal is sent out with a three-month consultation deadline, and the outcome remains to be seen.

About 1,200 Ukrainians work for the Norwegian fleet. The ongoing war on Ukraine may provide for several logistical problems concerning war risks threatening crew members in ports owned or operated by Russia. The safety of the seafarers and ships remains of the utmost importance for Norwegian shipowners. The Norwegian Shipowners' Association collaborates closely with Norwegian authorities, the Norwegian Shipowners' Mutual War Risks Insurance Association and NORMA Cyber – a maritime cyber security centre built up by the Norwegian shipping industry.

4 | What are the key regulatory and compliance issues for your country's shipping market? What's coming up in the near future?

Norway has supported and implemented EU's sanctions as a measure against Russia following its invasion on Ukraine. The relevant Norwegian law and regulations make it illegal to make money or assets available, directly or indirectly, or



leave them for the benefit of natural and legal persons listed on the sanction lists implemented through the regulation. A failure to perform sufficient due diligence in high-risk transactions where owners or ultimate owners are implemented in the sanction lists could lead to criminal liability. The list and Norway's implementation of it are also continuously updated. This creates a demanding compliance regime for the shipping sector as regards high-risk international transactions.

Norway's development in the maritime sector is largely dictated by the development of IMO and EU instruments, which have seen a strong focus on environmental aspects in later years. Both IMO and EU have a joint goal of reducing CO2 emission per transport work by at least 40 per cent by 2030.

Although Norway is not a part of the EU, several EU developments directly and indirectly affect developments in the Norwegian shipping sector. The European Commission has adopted a proposal to make the EU's climate, energy, land use, transportation and taxation policies fit for reducing net GHG by at least 55 per cent by 2030 compared to 1990. It is mainly the EU's Emission Trading Scheme and the requirements for new alternative fuels (FuelEU) that will impact the shipping industry. The Norwegian government has officially stated that these goals are

“The leading debt finance providers in the shipping industry are DNB and Nordea.”

aligned with EU policies and stressed the importance of adhering to these joint goals for Norwegian players to have a competitive advantage in the European market. Norway has also been a part of the EU Emissions Trading System since 2008.

IMO instruments also have several important upcoming developments that will affect Norwegian shipowners. The Energy Efficiency Existing Ship Index (EEXI) and the Carbon Intensity Indicator (CII) will come into force on 1 January 2023, with new amendments adopted into MARPOL in 2021. Shipowners must adjust their vessels' emissions to comply with the specific requirements flowing from the EEXI framework. CII is a rating system that indicates a ship's environmental transport efficiency on a scale from A to E. If ships receive the below-standard rating for energy efficiency E, or three consecutive years with a rating of D, the shipowner must develop a Ship Energy Efficiency Management Plan (SEEMP) indicating how a satisfactory transport efficiency will be achieved. These measures are part of the EU's strategy to reduce GHG emissions.

In November 2021, the Norwegian Register of Beneficial Owners Act partly entered into force. The Act will apply reporting requirements for companies, which will give the authorities and others access to information concerning businesses'

beneficial ownership. This is an initiative to combat money laundering and the financing of terrorism. The Act applies to all businesses registered or operating in Norway. It imposes obligations for legal entities to collect information regarding their beneficial owners concerning the basis for ownership and the ownership structure.

Following the enforcement of the Transparency Act on 1 July 2022, 'larger enterprises' have to do due diligence on their own company, supply chain and business partners, as well as account for the due diligence and respond to requests regarding the due diligence. See more on the Transparency Act under question 3, above.

5 | What are the shipping industry's current sources of finance? How do you predict they will develop, and what are the advantages and challenges to financing a vessel in your country?

The leading debt finance providers in the shipping industry are DNB and Nordea. Several other niche players are also active in the market, such as banks operating within specific parts of the shipping industry. Furthermore, several foreign banks are also active within the Norwegian market, particularly concerning syndicated loans.

NPR, Clarksons Platou, Arctic, Fernley and Pareto are the leading players in the Norwegian syndicated shipping project market, focusing on sales and lease-back transactions. Bond issues are an ever-important and highly liquid source of financing for the shipping industry, and the bonds are issued through Nordic Trustee. There has been an increased initiative, especially by the Norwegian Shipowners' Association, towards implementing a contract for difference (CFD) as a valid measure to meet the goal of a green and environmentally neutral fleet by 2050. CFD contracts are regarded as the most effective alternative to aid the transition from regular fossil fuel to greener alternatives such as hydrogen and ammonia. As of now, these alternatives are not economically viable due to high maintenance and transition costs. The CFD contracts could be the tool to bridge the technological gap that needs to be filled for greener fuels to be competitive on their own two feet.

According to the Maritime Outlook 2022 report published by the Norwegian Shipowners' Association, shipowners have, in general, reported increased access to financing compared to 2021. Between 15 and 25 per cent report that their access to funding is good. There are, however, still problems in specific segments, such as the offshore service vessel and passenger segment. According to the report, expectations of improvements in the near future are still present across all sectors, with the short sea and deep sea providing the highest expectations.

6 | Have there been any recent significant domestic or foreign court decisions or arbitration awards that impact on your country's shipping market?

In a recent case from the Norwegian Court of Appeal in March 2022, the court found a shipowner guilty of attempting to participate in illegally scrapping the vessel *Harrier* in Pakistan. The shipowner was convicted to six months in prison for violating the Norwegian Pollution Act's provisions on the export of waste. This case marks the first time a private person has been sentenced for illegal beaching in Norway and illustrates the country's position on environmental preservation in the shipping industry through strict regulation and enforcement.

In a Norwegian Supreme Court ruling from 2021, the court rejected the appeal on a case concerning, among other things, what is to be regarded as a timely notice of labour strike for ship crew. The dispute arose from a claim for damages after International Transport Workers' Federation members boycotted ships that operated on terms that avoided applying employees' collective agreements. The ruling of the Court of Appeal, where the court considered the notice to be timely, and later dismissal of the appeal will likely contribute as a guideline for labour strikes in the shipping industry.

Another significant Supreme Court ruling from 2021 dealt with the application of the shelf provision. Six workers resident abroad had worked on board a foreign ship that had transported a deck from an oil platform on the continental shelf to a shipyard in Norway. According to the shelf provision in the tax conventions with the relevant foreign states, tax is payable to Norway for work performed 'offshore' or 'off the coast' for 30 days or more during a 12-month period. The Supreme Court found that the demarcation between land and sea also defined what was 'offshore' within the meaning of the shelf provision, which made it irrelevant whether the activities had been conducted outside or within the baseline. The Supreme Court also found that only days the employee worked should be counted when deciding whether the 30-day requirement was met.

7 | What is the outlook for your country's shipping market? Which sectors are likely to grow, and which not?

There has been some recovery from the down periods of 2020 into parts of 2021. One segment that has experienced more significant growth is the short sea segment, which experienced a 7 per cent increase in turnover. Similarly, the deep sea and the passenger ship segment saw some increased turnover in 2021, and these segments are expected to continue their growth. There are also, in general, fewer ships and rigs in lay-up compared to last year's high numbers. The number has been reduced



from 204 ships and rigs in January 2021 in lay-up to 86 ships and rigs in January 2022. This number is expected to decrease further in 2022.

The offshore service segment has struggled since the oil price drop in 2014 and has seen their turnover be further reduced by 4 per cent in 2021 to half of that in 2014. However, there is some cause for optimism for this segment, both due to the increased oil price and the increased market for offshore wind projects. The development of a domestic market for offshore wind may also be an important steppingstone for this market, with the opening of Utsira North and Southern North Sea II.

According to a report published by the Norwegian Shipowners' Association, over 50 per cent of Norwegian shipowners state that they are planning to order new ships or rigs. It is estimated that the Norwegian shipowners will order 162 new ships and eight new rigs within the next five years. The transport segments, including deep sea and short sea, seem to have the highest number of planned new orders. In the short sea segment, nine out of 10 shipowners state that they will order new ships within five years. This will drastically decrease the average age of

the short sea fleet. In the deep-sea segment, almost six out of 10 shipowners state that they have planned to sign new contracts.

Regarding contracting new ships with Norwegian yards, approximately two out of three shipping companies state that they want to use Norwegian shipyards. Three out of four shipowners in the offshore service segment state that Norwegian shipyards are potential contractors. However, in the deep-sea and short-sea segments, none consider Norwegian yards. Cost seems to be the highest obstacle to using Norwegian yards for shipbuilding.

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The Inside Track

What are the particular skills that clients are looking for in an effective shipping lawyer?

An effective shipping lawyer needs a solid knowledge of the law, combined with a commercial understanding of the business and technical issues of the shipping industry.

Clients require and expect shipping lawyers to be responsive and available. The ability to act swiftly and effectively is heightened in shipping practice given the industry's high-paced nature and typical tight deadlines with excessive costs resulting from the delay.

What are the key considerations for clients and their lawyers when arranging finance for a shipping transaction?

From a ship-owning clients' perspective, a key consideration is to strike a balance between various types of lenders' requirements for robust protection and the shipowner's need for freedom to operate in a commercially viable manner. This has become increasingly important as bonds and sale-leaseback arrangements have become more available alternatives to bank financing. For shipping lawyers to add value to their clients, they would need experience with several types of finance transactions, as well as experience with operational issues within shipping.

What are the most interesting and challenging cases you have dealt with in the past year?

In the past year, we have assisted Maersk Drilling on its divestment of the rig *Maersk Inspirer* in a complex transaction involving a sale price of US\$373 million. We have also assisted K Line on its sale of its North Sea fleet of four PSV and two AHTS vessels, namely *KL Brevikfjord*, *KL Barentsfjord*, *KL Brofjord*, *KL Brisfjord*, *KL Sandefjord* and *KL Saltfjord*.

Another interesting assignment has been to advise Grenland Havn in connection with the development project for a new harbour terminal in Frier Vest in the Grenland area, which is an industrial hub in the south-east of Norway.

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Market Intelligence offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most significant cases and deals.

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