Standard Club

By your side

Bulletin, October 2020

Ship Recycling

Guidelines for devising a strategy in compliance with complex regulatory framework

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This bulletin aims to assist members with regard to ship recycling, in devising a policy and implementing practical loss prevention measures in line with the complex regulatory landscape.

Introduction

Ship recycling activity, like any other industry, is dependent on supply and demand. Generally, ships reach their 'end-of-life' when their second-hand sale value for further trading drops below their recycling value. This may happen as the ship's condition deteriorates with age which may necessitate uneconomical repairs, given the demand for ships being lower than the available supply or due to specific regulatory requirements.

On the demand side, the price of steel and the cost of ship-breaking are the most prominent factors. The cost of ship-breaking varies from country to country, depending on labour costs and the types of regulations on workplace safety and the environmental impact that have been implemented in that specific country.

Like most other sectors, Covid-19 has disrupted the ship recycling segment. According to the quarterly updates received from the NGO Shipbreaking Platform, 166 ships were demolished in the first quarter of 2020, which reduced to 98 ships in the second quarter as several recycling yards were closed due to the Covid-19 pandemic. As the restrictions are being gradually eased, operations at the demolition yards are steadily resuming.

In the absence of a universally applicable convention for ship recycling, and uniform safety and environmental standards at ship recycling locations, the club recently published an article highlighting practical considerations for shipowners when sending end-of-life ships for recycling.

This publication complements the previous article and is aimed at assisting members in devising a policy and implementing practical loss prevention measures in line with the complex regulatory landscape.

Regulatory overview

a) IMO's Hong Kong Convention (HKC)

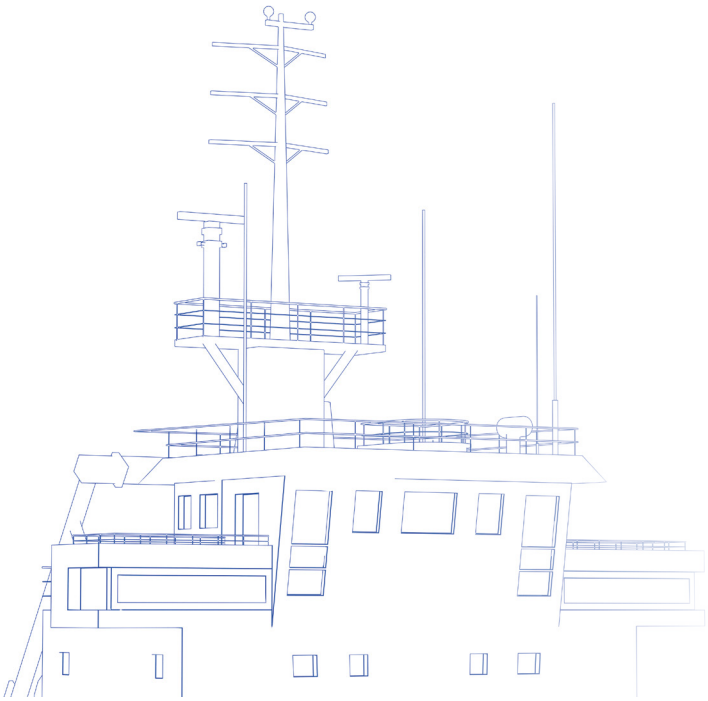
The primary regulation governing ship recycling is the International Maritime Organisation's (IMO) Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the Hong Kong Convention or HKC). It is aimed at ensuring that ships, when being recycled after reaching the end of their operational lives, do not pose any unnecessary risks to human health, safety and the environment. The HKC was adopted in 2009 but has yet to enter into force.

The HKC will enter into force 24 months after the date on which 15 states, representing 40% of world merchant shipping by gross tonnage and on average 3% of recycling tonnage for the previous 10 years, have signed it. To date, not all these conditions have been met, albeit several countries have ratified it and a few shipyards comply with it.

Upon its entry into force, the HKC will be applicable to ships of 500gt or more engaged in international trade, with an exclusion for warships and ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the state whose flag the ship is flying. HKC also applies to ship recycling facilities operating under the jurisdiction of a party to the Convention.

Over the years, the IMO has developed the following guidelines to support the implementation of the HKC:

- 2011 Guidelines for the Development of the Ship Recycling Plan, adopted by resolution MEPC.196(62)
- 2012 Guidelines for Safe and Environmentally Sound Ship Recycling, adopted by resolution MEPC.210(63)
- 2012 Guidelines for the Authorization of Ship Recycling Facilities, adopted by resolution MEPC.211(63)
- 2012 Guidelines for the survey and certification of ships under the Hong Kong Convention, adopted by resolution MEPC.222(64)
- 2012 Guidelines for the inspection of ships under the Hong Kong Convention, adopted by resolution MEPC.223(64)
- 2015 Guidelines for the Development of the Inventory of the Hazardous Materials, adopted by resolution MEPC.269(68).



b) UN Basel Convention and its Ban Amendment

The other regulation, and most relevant in force today, is the UN Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, including its Ban Amendment. The applicability of the Basel Convention to ships sent for recycling rests upon three elements:

1. End-of-life ships are considered as hazardous waste because they contain toxic components, such as asbestos, lead and mercury.
2. They are subjected to transboundary movement.
3. Both the state of export and the state of import are parties to the Basel Convention.

As ships destined for dismantling will rarely fly the flag of the state in which they are to be recycled, this activity can represent a transboundary movement of hazardous waste. However, given the global nature of the shipping industry and the practices associated with sending end-of-life ships for recycling, there has been difficulty in applying the provisions of the Basel Convention to ship recycling.

The Ban Amendment entered into force on 5 December 2019 and prohibits the transportation of hazardous wastes from an Organisation for Economic Co-operation and Development (OECD) country to a non-OECD country. It is binding on 'Annex VII Parties' (members of the OECD and the European Union (EU), and Liechtenstein) that have expressed their consent to be bound by it.

c) EU Waste Shipment Regulation (EU-WSR) and Ship Recycling Regulation (EU-SRR)

The EU unilaterally adopted the Basel Convention, and its Ban Amendment into its law in 2006 through Regulation (EC) 1013/2006, also known as the EU Waste Shipment Regulation (EU-WSR).

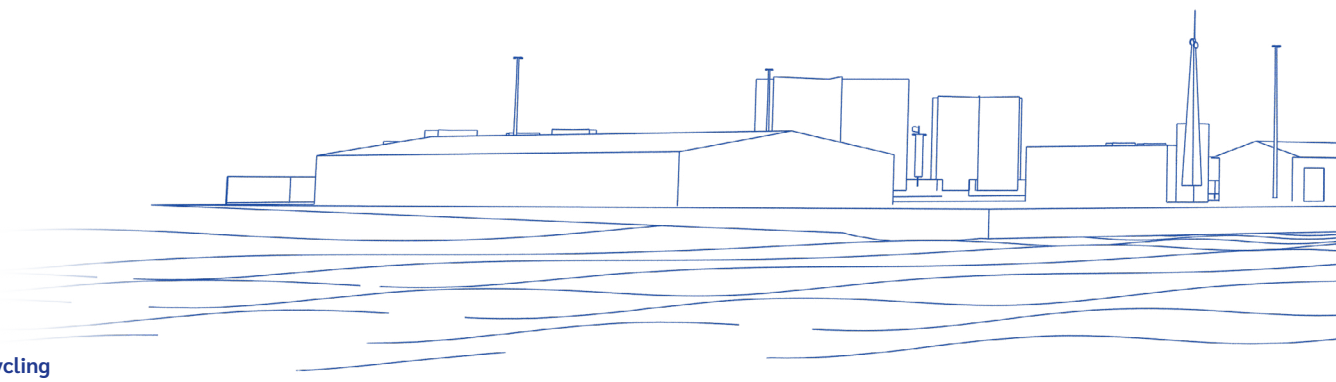
Additionally, the EU Ship Recycling Regulation (EU-SRR) was adopted in 2013 through Regulation (EU) No.1257/2013. Its general application started from 31 December 2018 and it will be fully implemented from 31 December 2020.

EU-SRR applies to ships of 500gt and above that are flying the flag of countries in the EU or European Economic Area (EEA) but also to all ships of 500gt and above, regardless of the flag they are flying, when calling a port or anchorage of an EU/EEA member country.

It does not apply to any warships, naval auxiliary or other ships owned or operated by a state and used only in government non-commercial service.

The EU-SRR closely follows the HKC structure, concepts and definitions, but also sets out a number of additional requirements that go beyond those established in the HKC.

The European Maritime Safety Agency (EMSA) has released guidance on the inspections from EU port states to enforce the provisions of the EU-SRR. It is a reference document that provides both technical information and procedural guidance, thus contributing to harmonised implementation and enforcement of the provisions of the EU-SRR and the Port State Control (PSC) Directive.



Basel Convention

- Adopted in 1989, in force from May 1992
- Control of transboundary movement of hazardous wastes and their disposal
- Prevention of the transfer of hazardous waste from developed to developing countries
- Due to the global nature of the shipping industry and the practices associated with sending end-of-life ships for recycling, there has been difficulty in applying the provisions of the Basel Convention to ship recycling

HKC

- Adopted in 2009, not yet in force
- Applicable to recycling facilities and ships ≥ 500gt, except for government owned non-commercial ships and ships that operated throughout their lives exclusively in domestic waters

EU-SRR

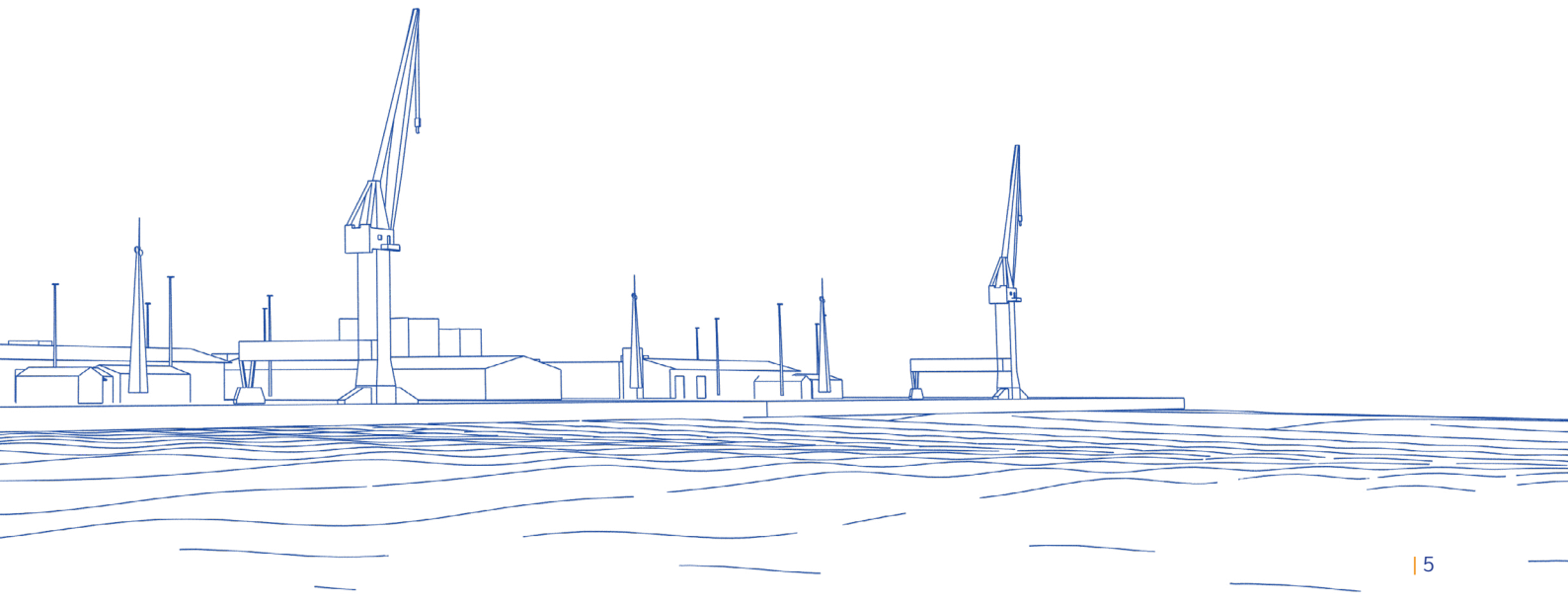
- Adopted in 2013, applicable to new EU/EEA flagged vessels from 31 December 2018. Will be fully implemented from 31 December 2020 (EU Regulation No. 1257/2013)
- Transposes HKC requirements into EU law
- IHM Part 1 required for EU flag ships and foreign flag ships ≥ 500gt calling at EU ports

Basel Ban Amendment

- Adopted in 1995, entered into force on 5 December 2019
- Prohibition of the export of hazardous waste from OECD to non-OECD countries
- Ships at the end of their 'lifespan' destined for recycling fall under the definition of 'waste'

EU-WSR

- Adopted in 2006 and entered into force in July 2007 (EC Regulation No. 1013/2006)
- Implements Basel Convention and Ban Amendment requirements at EU level
- Prohibits export of hazardous waste for disposal to non-EU or non-OECD countries
- Prohibits import of hazardous waste for disposal from non-EU or non-OECD countries



Inventory of Hazardous Materials (IHM)

Both the HKC and EU-SRR require an Inventory of Hazardous Materials (IHM) to be present on a ship.

These hazardous materials are known to represent a possible danger to people and the environment. To ensure a safe and environmentally sound handling of these materials, a detailed documentation of the materials in the ship's structure and equipment, and in stores, is important.

As required by the EU-SRR, from 31 December 2018, new EU/EEA flagged ships of 500gt and above, and from 31 December 2020, all existing EU/EEA flagged and non-EU flagged ships calling at EU ports and anchorages are required to have a certified IHM on board. The IHM is required to be verified by the flag state or by a Recognised Organisation (RO) authorised by the flag state.

The verified IHM should be accompanied by an Inventory Certificate (for EU/EEA flagged vessels) or a Statement of Compliance (SoC) for flying the flag of a third country (non-EU/EEA flag).

The HKC has not yet entered into force, but IMO Resolution MEPC.269(68) provides guidelines and a standard format for the development of the IHM. Additionally, EMSA has issued a best practice guidance, a non-binding document, for the development and maintenance of the IHM in accordance with the EU-SRR.

a) Overview of IHM

Essentially, an IHM consists of three parts:

- Part I: Hazardous materials contained in the ship's structure and equipment
- Part II: Operationally generated wastes
- Part III: Stores.

IHM Part I is applicable to all ships and shall be kept up-to-date during the operational life of the ship, while IHM Parts II & III are only required to be prepared when it is decided that the ship will be sent for recycling.

For new vessels, compliance should be relatively easy, as an IHM Part I can be developed by the shipbuilder at the design and construction stage based on suppliers' declarations of the hazardous material content of their products.

For existing ships, it may be necessary for a qualified service provider (a hazardous material or 'hazmat' expert) to attend the ship and prepare a report, based on a document analysis and an on-board investigation through sampling and visual checks.

These reports are subject to review and approval by the flag state or 'Recognised Organisation' (RO), which is usually the classification society acting on behalf of the flag state. This is followed up by an initial survey and verification on board, after which, if everything is in order, the IHM certificate or Statement of Compliance (SoC) can be issued. The whole process may take up to three months or longer, depending on the ship's size/ construction and the review process.

In preparation of an IHM, the standard format according to the IMO guidelines can be used. Note, however, that EU legislation adds two additional items on top of the HKC requirements to the list of controlled hazardous materials: Perfluorooctane Sulfonic Acid (PFOS) in Annex I and Brominated Flame Retardant (HBCDD) in Annex II. As such, if an IHM is developed to cover EU-SRR requirements, then it is recommended to include a reference stating this.

Composition of the IHM		Shipbuilding and Operation	Prior to Recycling	
HKC	EU-SRR	**Part I:** Hazardous materials contained in ship structure or equipment	**Part II:** Operationally generated wastes	**Part III:** Stores
Table A: Mandatory for all ships and installations		✓		
Appendix 1	Annex I			
Table B: Mandatory for new ships and installations, voluntary for existing ships		✓		
Appendix 2	Annex II			
Table C: Potentially hazardous items			✓	✓
Table D: Regular consumable goods potentially containing hazardous materials				✓

b) Disruptions caused by the Covid-19 pandemic

Even in normal circumstances, it may take several months to compile and develop the IHM. However, with the current pandemic and fast-approaching year-end deadline, several shipowners are finding it challenging to comply with the upcoming regulations within the time now available, as lockdown, travel restrictions and quarantine measures implemented in most countries since the outbreak of Covid-19 have caused widespread disruptions to the industry and restricted the ability of surveyors and 'hazmat' experts to visit ships. This makes full compliance by the 31 December 2020 deadline particularly difficult.

Taking this situation into consideration, BIMCO and other shipping organisations sent a joint industry letter to the European Commission (EC) requesting a time-limited implementation or grace period to enable shipping companies to make up for lost time caused by Covid-19 restrictions and interruptions.

In its response, the EC stated that it is not empowered to extend the legal deadline of 31 December 2020, but acknowledged that *"it may be necessary to take into account the exceptional circumstances of the Covid-19 crisis in the enforcement of those obligations by Member States, where those circumstances create situations where the compliance with specific obligations resulting from the EU SRR is temporarily not possible, or excessively difficult"*.

The EC noted the compliance-related issues caused by the Covid-19 pandemic and raised by the industry, and will aim to further discuss the matter with EU member states in the coming months, with a view to ensuring a harmonised approach at Port State Control (PSC) level as of 1 January 2021.

If the 31 December 2020 deadline cannot be met, BIMCO recommends the development of IHMs on the oldest ships first. Old ships are in general more likely to be recycled and such a risk-based planning will demonstrate how shipowners are working proactively in accordance with the spirit of the EU-SRR.

BIMCO's article also includes industry guidance to companies on how to manage their fleets with respect to compliance in the face of the challenges presented by Covid-19.

Due to the time-consuming process of IHM report compilation, some ROs have been providing training and/or software assistance for crew to compile the IHM during this period.

The International Association of Classification Societies (IACS) has allowed the provision of desktop review for IHM surveys, to be followed up by on-board verification at a later date. This process, however, is subject to the flag state's approval.

As and when travel restrictions in some parts of the world gradually ease, shipowners and operators will need to assess whether the IHM requirement is applicable to their ships and plan well in advance to comply before the deadline. In order to avoid any compliance-related issues caused due to administrative backlog, it is recommended to submit the IHM for the RO's approval at least a couple of months before 31 December 2020.

It remains to be seen how those inspecting IHMs will treat significant discrepancies between a 'virtual' IHM and the vessel itself. However, while imperfect, with just a few months left to comply with the EU-SRR, it may be the best means available of demonstrating compliance in the given circumstances.

c) Maintenance of the IHM

As IHM Part I stays with the ship throughout its operational lifetime and is subject to periodical review by the PSC or RO, it is essential to maintain the inventory, especially after any repair or conversion of a ship. The best way to do this is by assigning a designated person (either ashore or on board) with the responsibility of keeping a record of changes and updating the inventory during the lifetime of the ship.

It is recommended that the procurement policy is updated to include reference to IMO Resolution MEPC.269(68) and EU Regulation No. 1257/2013, ensuring that any items supplied to the ship are accompanied by a completed Material Declaration (MD) and Supplier Declaration of Conformity (SDoC).

MDs and SDoCs should be collected for all purchased items that will or could be a part of the ship's structure and fitted equipment – even if they contain no hazardous materials. If any machinery or equipment or component is added, removed or replaced or the hull coating is renewed, the MD/SDoC forms provided by the suppliers shall be properly filed and Part I of the IHM shall be updated. Updating is not required if identical parts or coatings are installed or applied.

Devising a ship recycling policy

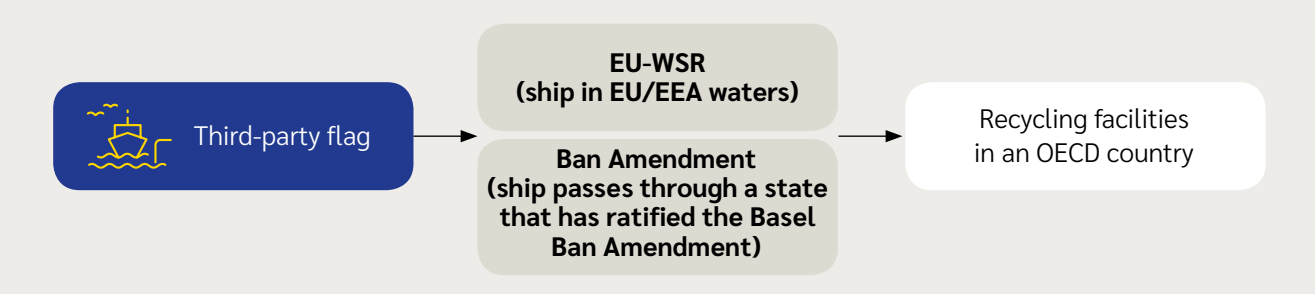
As stated above, the decision on whether to send a ship for recycling is usually based on its obsolescence, current freight rates, future market prospects and scrap prices. However, considering the complex regulatory landscape, shipowners need to consider several factors other than just the value of the ship at the end of its life, in order to ensure that the ship's dismantling does not endanger people and the environment.

a) The EU/EEA flagged vessels are subject to the provisions of the EU-SRR from 31 December 2018. These ships must only be recycled at a European List of ship recycling facilities and are required to have a Ready for Recycling Certificate (RfRC). The shipowner shall provide the recycling facility with IHM Parts I, II and III for the development of the ship recycling plan (SRP). Once the SRP is ready, notification to the administration is required, requesting a final survey by the ship's flag or by the RO to verify that:

- the updated IHM Part I, and approved IHM Parts II and III, have been prepared and are on board
- the approved SRP is on board and has been developed considering the materials listed in the IHM
- the operation of the ship is recycling friendly prior to entering the agreed recycling facility from the European List.

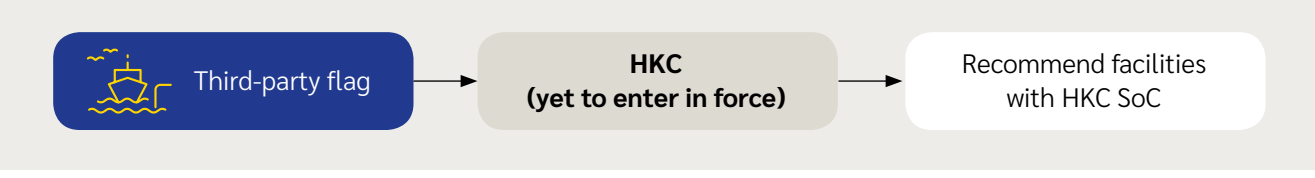
b) Regardless of the flag the ship is flying, if the vessel was geographically in EU/EEA waters or in the waters of a party to the Basel Ban Amendment when the decision to recycle the ship was taken, then the provisions of EU-WSR or Ban Amendment will be applicable, and the ship will need to be recycled in a facility of an OECD country. It may also apply if the ship transits through a state that has ratified the Basel Ban Amendment.

Recycling facilities in OECD countries include, but are not necessarily limited to, facilities in the EEA, the USA and Turkey.

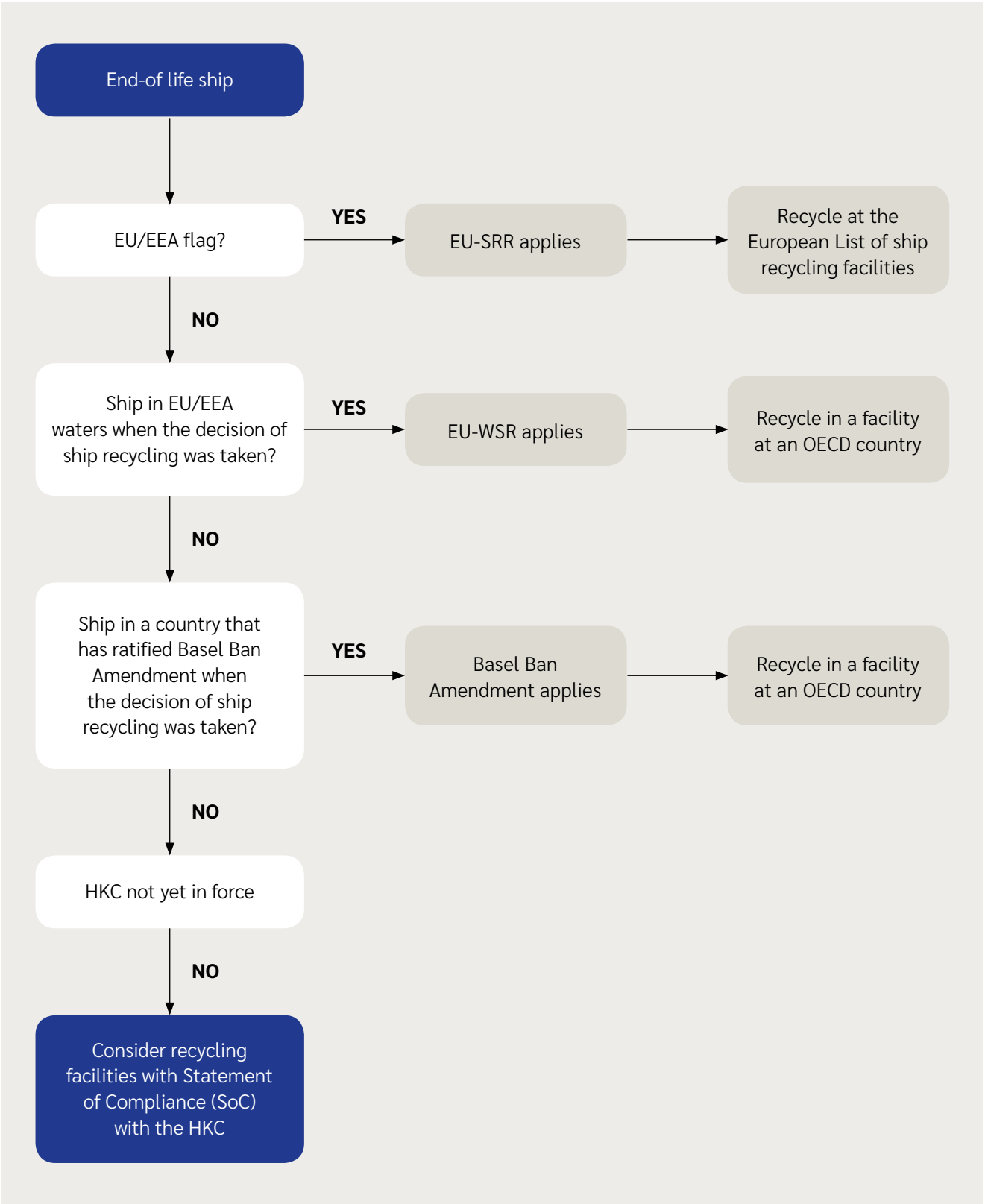


c) Until the HKC enters into force, there are no international standards forming a basis of enforcement for ships that are not subject to the EU-SRR, EU-WSR or Basel Ban Amendment. These vessels may be recycled in OECD or other countries, as well as at facilities featured on the European List. However, it is recommended to consider recycling facilities with a Statement of Compliance (SoC) with the HKC. Such recycling yards will be able to provide a Ship Recycling Plan (SRP), specifying the manner in which the ship will be recycled, depending on its particulars and its inventory of hazardous materials.

In the interim period before the HKC comes into force, it is recommended to consider BIMCO's RECYCLECON contract for the sale of vessels for green recycling. It provides shipowners and recycling yards with a commercial solution that mirrors many of the features of the HKC.



Recycling considerations (flowchart)



Risks for non-compliance/legal cases

A recycling process in line with international requirements and responsible standards may turn out to be more expensive than conventional methods. However, inadequate or uninformed decisions relating to ship recycling could lead to significant risks, including criminal liabilities, reputational damage, fines and financial loss.

That is why it is recommended to implement a carefully evaluated strategy, based on internal processes designed to reflect a ship's residual value and depreciation models, with due consideration to responsible recycling practices.

Unfortunately, this has not always been done and there have been cases where shipowners have faced criminal prosecution due to non-compliance with the applicable regulations.

The Seatrade

In March 2018, to the surprise of the shipping industry, the District Court in Rotterdam penalised the Dutch shipowner Seatrade for breaching the EU-WSR.

In 2012, Seatrade sent four reefers from the EU ports of Hamburg and Rotterdam for scrapping in India, Bangladesh, and Turkey.

Proceedings were commenced by the Dutch Public Prosecutor for breach of the EU waste export laws prohibiting the shipment of 'hazardous waste' from EU ports to non-OECD countries.

Seatrade argued that the ships were not considered as waste because when they sailed from the EU ports they were seaworthy and operational, and indeed, three of them had cargo on board.

However, email evidence showing that negotiations were held as to the fleet's scrap value before the voyages from Hamburg and Rotterdam contributed *inter alia* to the court's conclusion that the shipowners' intention was to scrap the ships.

Taking into account the adverse effects that scrapping (especially in the South Asian yards) can cause to the environment and human health and safety, the court found that the executives of Seatrade had "closed their eyes" to the problem and only considered the business interests. The court found two executives guilty, suspending them from work for 12 months and fining them heavily for an amount representing the profit made from selling the reefers to scrapyards in non-OECD countries in breach of the existing EU regulations.

The Seatrade shows the critical element of the 'last voyage' of ships from EU ports as this will play a pivotal role regarding the application of the EU regulations. It may also be equally important where and when a ship changes her flag before travelling to a recycling yard.

Shipowners must be vigilant not to conceal/misdeclare the ship's destination when leaving EU waters for recycling, as regulators may review the list of ships arriving in Asian scrapyards to assess whether there has been a breach/failure to comply with the EU regulations.

Shipowners must also be aware that their decision-making process prior to recycling may be reviewed in order to assess the shipowner's true intention and whether the purpose of changing a flag state registration was to evade EU regulations.

In 2020, the shipowners succeeded in their appeal and the case has now been sent back to the lower court for retrial due to court impartiality concerns. In any event, the *Seatrade* is an important decision as it is the first prosecution under the EU rules and has opened the door to further prosecutions.

The Eide Carrier

In 2017, the Norwegian authorities investigated the sale and scrapping in Pakistan of the MV EIDE CARRIER contrary to the EU-WSR.

In 2015, the ship was sold for scrap. For two years, she remained laid up in Norway and, in 2017, the ship attempted to leave Norway under a new name, flag and registered owner. Only hours after her departure, her engine stopped and, although the ship was in danger, the master did not call for help. As the ship drifted towards Norway, salvage operations were triggered by the authorities. After the operations had come to an end, the local authorities searched the ship's ownership and insurance to claim remuneration and it transpired that the ship was under a scrap voyage to Pakistan. It further transpired that the ship had changed its name just one week before departure and, in an effort to escape checks for illegal export, the shipowners submitted a false repair contract to the Norwegian authorities.

The Norwegian authorities charged the shipowner for having attempted to illegally export hazardous waste.

This is not the first time that authorities were provided with false information to outwit compliance with regulations. The CITY OF TOKYO was allowed to depart from Antwerp allegedly to go for repairs in Dubai, but she ended up being beached in Bangladesh. Also, the FPSO NORTH SEA PRODUCER is alleged to have been exported illegally from the UK to Bangladesh under the pretence of operational use in Nigeria.

The Eurus London

This case involves a claim from a Bangladeshi worker who was injured in April 2015 in a shipyard in Bangladesh during dismantling operations. The worker claimed compensation from the shipowner, Zodiac Maritime. It was argued that the owner should have known about the harmful scrapping conditions in the Chittagong yards and beaches, and that it had a duty not to sell vessels to Bangladeshi shipyards via their contractors or cash buyers.

The above cases are examples of the risks that shipowners may face for non-compliance with applicable regulations and are a clear message that scrapping and recycling face increased scrutiny from a range of industry organisations, NGOs and authorities. It is increasingly unlikely that actual or alleged violations will be overlooked. They also serve as a good reminder of the importance of doing business with reliable companies and the need to carry out effective prior due diligence. Regulators are certainly monitoring compliance more closely and shipowners are strongly encouraged to abide by the regulations to avoid facing prosecution and potential criminal penalties.

Club's Cover

We wish to remind members of their obligation to disclose when they intend to recycle a vessel, so that the managers can determine the appropriate point up to which cover should continue.

Pursuant to Rule 11.2, all members are obliged to disclose to the club any change in any material information relating to a vessel, including, but not limited to, a change of management, flag, classification society, government authority responsible for ship certification for the trade in question, nationality of crew, trading or operating area, or nature of trade or operation. Accordingly, a member has an obligation to inform the club if it wishes to perform a scrapping voyage.

As mentioned in the club's previous article on the practical considerations for ship recycling, when a member informs the club that it intends to scrap a vessel, the managers then need to:

1) obtain details of the final voyage, the destination of the scrapping and at what point in the process the legal title of the ship will transfer to the 'buyer'

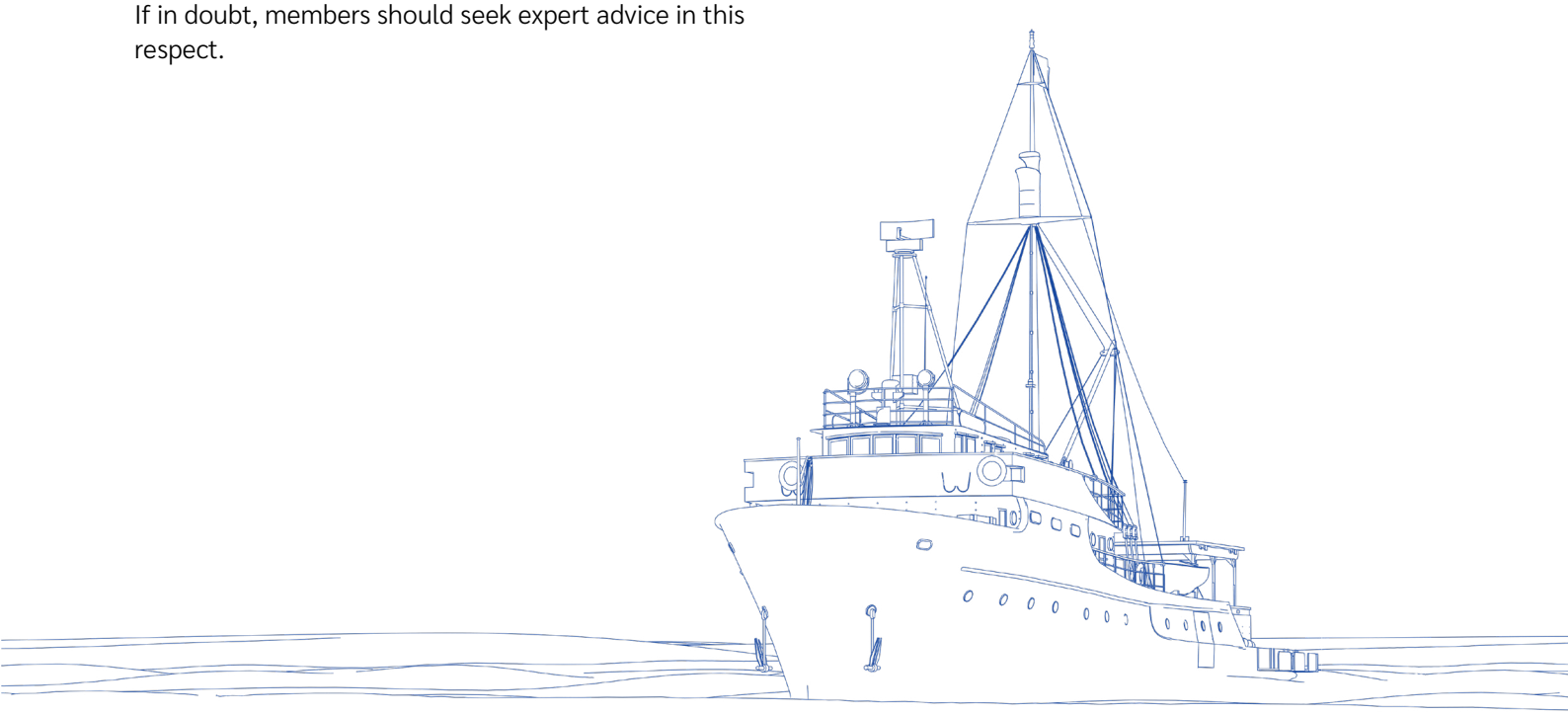
2) seek confirmation that all relevant regulations, conventions, and local licences/permissions for scrapping have been complied with/obtained.

If in doubt, members should seek expert advice in this respect.

Conclusion

It is recommended that members intending to send any ships for recycling ensure full compliance with the international standards – the HKC or EU-SRR, Basel Convention, Basel Ban Amendment, EU-WSR and other applicable regulations. They are recommended to exercise due diligence by selecting a yard that has a Statement of Compliance (SoC) with the HKC or EU-SRR, and by preparing the ship for recycling in a sustainable way through mapping hazardous materials. When selling a ship to a third party, a high degree of vigilance is required too.

After confirming that all relevant regulations have been complied with, the club needs to be provided with details of the final voyage, the ship's flag, the location of the recycling and at what point in the process title will transfer to the 'buyer'.



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October 2020