



## SHIP RECYCLING REGULATION

In December 2021 a publication of the European Commission declared the need for decisive enforcement on illegal ship recycling. Criminal liability of shipowners will have to be assessed against specific parameters. This RMSC Expert Overview provides a quick overview of relevant parts of the SRR.

The SRR bans European flagged ships from being recycled on facilities that are not included on the European List. Yet this list does not include facilities in any of the major ship recycling nations in South Asia.

The European Commission has indicated that it wants to see decisive enforcement to prevent European flagged ships from ending up at facilities that are not listed on the European List. The Commission will seek enforcement by the member states of article 6(2)(a), that reads: "Ship owners shall ensure that ships destined to be recycled (...) are only recycled at ship recycling facilities that are included in the European List". Criminal sanctions will apply if violation of the regulation can be proven. The burden of proof, however, might be bigger than the European Commission bargained for.

### LIMITED SCOPE SRR: EUROPEAN FLAG

Article 2(1) SRR states that the regulation is limited to ships flying the flag of a member state of the EU. This means that by changing to a non-European flag, the SRR no longer has to be complied with. This is a major loophole that is widely acknowledged by NGO's and

the EU alike. If a ship is reflagged before the decision to recycle it is made, no criminal liability can be derived from the SRR. The latter holds true also if the ship is reflagged after the decision to recycle it has been made. The reason being that through reflagging a ship owner ensures that a ship no longer falls under the scope of the SRR. Therefore, no liability can result from it.



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### LIMITED SCOPE SRR: SHIP OWNER

According to article 3(14) SRR, the ship owner is defined (in principle) as "the natural or legal person registered as the owner of the ship, including the natural or legal person owning the ship for a limited period pending its sale or handover to a ship recycling facility".

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The SRR exclusively targets owners that can factually decide on the sale or handover of a ship to a recycling facility. A penultimate owner ceases to qualify as a ship owner under its regime, even if the subsequent owner is a cash buyer. Therefore, according to the final text of the SRR, the sale of a vessel completely clears the penultimate owner from liability.

### THE FUTURE OF THE EUROPEAN LIST

The European List, currently in its ninth iteration, does not include facilities from any of the major shipbreaking nations in South Asia, but does include facilities in Turkey. It is uncertain if this will change soon, although the EU is considering a bilateral agreement with India to expand the reach of the list. This would broaden the real-world reach of the requirements of the SRR, although it – conversely – would hinder the commitment of recycling yards and shipping companies to the HKC. As the SRR remains a decidedly regional instrument governing limited world tonnage, i.e., tonnage with European flags, this is a suboptimal

result. Additionally, it is unclear if the envisioned equality of HKC approved recycling facilities with those included on the European List is going to be enacted when the HKC ultimately comes into force.



## Shipowners are strongly advised to draft a Responsible Ship Recycling Standard

Meanwhile, shipowners are strongly advised to draft a Responsible Ship Recycling Standard (RSRS) for use in their companies. This document should, at minimum, describe the company standards imposed on recycling facilities, and should provide a procedure to safeguard against transgressions of the SRR in case of European flagged ships.

### GLOSSARY

#### European List

List of recycling facilities approved by (member states of) the EU, integral to the system of the SRR. In effect since 31 December 2018.

#### HKC

Hong Kong International Convention for the safe and environmentally sound recycling of ships, adopted by the IMO in 2009. It has not yet come into force.

#### SRR

Ship Recycling Regulation

#### WSR

Waste Shipment Regulation. It has been superseded by the SRR for European flagged ships but is still applicable under certain conditions, i.e., ships less than 500 gross tonnage and cases dating before 31 December 2018. It can also still be applicable to non-European flagged ships.

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