



The Norwegian Transparency Act in the maritime context

Maintaining fundamental human rights and decent working conditions for all involved in a ship during its lifespan can pose challenges. Among the factors that make it challenging are the shipping industry's long supply chains, the number of business partners, and the lack of coherent international labour and safety standards, all coupled with incentives to cut expenses where possible. A new act recently came into force in Norway applicable to larger enterprises. The Act demands transparent due diligence to be carried out with regard to fundamental human rights and decent working conditions. This article will expand on the Transparency Act and its implication for shipowners throughout the lifespan of a ship.

Written by Marte Roen (Kvale Advokatfirma DA, Oslo)

Introduction

Following an overall trend in Europe of legislating social responsibility, the Transparency Act entered into force in Norway on 1 July 2022. The Act aims to promote enterprises' respect for fundamental human rights and decent working conditions in connection with the production of goods and the provision of services. The Act also aims to ensure the public has access to information regarding how enterprises address adverse impacts on fundamental human rights and decent working conditions.

The Transparency Act applies to all "larger enterprises" that are resident in Norway and offer goods and services in or outside Norway. The Act also applies to larger foreign enterprises that offer goods and services in Norway and are taxable pursuant to internal Norwegian legislation. According to Section 3 a) of the Transparency Act, the term "larger enterprise" means enterprises that are covered by Section 1-5 of the Accounting Act or that on the date of financial statements exceed the threshold of two of the following three conditions:

1. sales revenue of NOK 70 million;
2. balance sheet total of NOK 35 million; and
3. an average number of employees in the financial year of 50 full-time equivalents.

Parent companies are considered larger enterprises if the conditions are met for the parent company and subsidiaries taken together.

The Act applies regardless of industry, meaning that most shipping companies in Norway will be subject to the Act. The enterprises covered by the Act have three obligations:

1. A duty to carry out due diligence;
2. a duty to account for due diligence; and
3. a duty to provide information.

Duty to carry out, account for and provide information on due diligence

An enterprise shall carry out due diligence following the OECD Guidelines for Multinational Enterprises. This includes the following:

1. Embedment of responsible business conduct into policies and management systems;
2. Identification and assessment of the actual and potential adverse impact on fundamental human rights and decent working conditions that the enterprise has either caused or contributed toward, or that are directly linked to the enterprise's operations, products or services via the supply chain or business partners;

3. Implementation of suitable measures to cease, prevent or mitigate adverse impacts;
4. Tracking of the implementation and results of measures;
5. Communication with affected stakeholders and rights-holders regarding how adverse impacts are addressed; and
6. Provision of or co-operation in remediation and compensation where this is required.

The due diligence shall be carried out regularly and in proportion to the size of the enterprise, the nature of the enterprise, the context of its operations, and the severity and probability of adverse impact on fundamental human rights and decent working conditions.

The enterprises shall publish an account of their due diligence yearly by 30 June on the enterprises' webpage. The account shall, among other things, include information regarding actual adverse impacts and significant risks of adverse impacts that the enterprise has identified through its due diligence, as well as information regarding measures the enterprise has implemented or plans to implement to cease actual adverse impacts or mitigate significant risks of adverse impact, and the results or expected results of these measures. The first year of reporting will be 2023.

It should also be noted that any person has the right to request information from an enterprise regarding how it addresses actual and potential adverse impacts. The enterprise must respond adequately and comprehensibly to such questions within three weeks.

The risk areas of the shipping industry

The sustainability initiatives in the shipping industry have often focused on environmental issues, but there is now an increasing focus on human rights and decent working conditions. There is a significant potential for adverse impact on human rights and decent working conditions throughout a vessel's lifespan. Norwegian shipowners must consider this when adhering to the duty to carry out, account for and provide information on due diligence in accordance with the Norwegian Transparency Act.

Some examples of situations that could pose a threat to fundamental human rights and decent working conditions in the different steps of a vessel's life cycle are:

- Designing, planning and ordering: Shipyards and suppliers with lower than average costs pose the risk of poor working conditions for employees and may also lack regulatory compliance.
- Shipbuilding: The building of ships poses a risk of accidents and injuries in shipyards, especially if safety standards are not prioritized. Short deadlines from buyers could also increase the risk of subpar labour standards. If temporary and contract workers are required to pay recruitment fees, the risk of debt bondage and forced labour increases accordingly.

- Operation of a ship: Due to economic reasons, the monitoring of conditions of the managing and recruiting party could be lacking. Recruitment fees are often applied for migrant workers which in turn expose them to debt bondage and forced labour.
- Breaking and recycling: Ship breaking is, in general, a high-risk industry accident-wise, especially when carried out in countries with a weak regulatory framework and law enforcement. Shipbreaking in these countries significantly increases the risk of inhumane working conditions and exploitation. (Note that ship recycling is already subject to a complex regulatory framework for Norwegian flagged ships as described in [a recent Gard Insight article](#).)

As the list above highlights, several higher risk activities of the international shipping industry will force shipowners to thoroughly evaluate their supply chains and business partners to adhere to the new Transparency Act.

What should shipowners focus on going forward?

Due to the long, complex and highly international supply chains within the shipping industry, Norwegian shipowners will face an extensive exercise in performing their due diligence according to the Transparency Act. If an enterprise covered by the Act has not yet initiated their due diligence, this should be started as soon as possible to comply with the Act, but also to be able to respond to any requests for information and to account for their due diligence work before 30 June 2023. An important first step in this work is to embed responsible business conduct into the policies and management systems. The tone from the top will set the foundation for the risk assessments and mitigating actions forming part of the due diligence.

While Norwegian enterprises may consider the Transparency Act a competitive disadvantage in an international market, it should be noted that the Norwegian Transparency Act is an indication of an overall trend in Europe. It should also be noted that similar regulations like the Transparency Act are currently being implemented across different European jurisdictions. Similar regulation will potentially also be implemented in the EU, as the Commission on 23 February 2022, adopted a proposal for a Directive on corporate sustainability due diligence. Thus, a benefit of the Transparency Act is that it provides a head start for the entities already working actively and diligently with human rights and fundamental working conditions. The Norwegian shipowners' establishment of effective and sufficient internal routines for control of supply chains and business partners according to the Transparency Act will be of benefit for the transition into similar and more extensive legislation to come.