



Norway prepares for ratification of the Nairobi Wreck Removal Convention

The Norwegian Parliament recently decided that Norway shall ratify the Nairobi Wreck Removal Convention and that the Convention shall be given effect not only in Norway's exclusive economic zone, but also in its territorial waters. The Norwegian Parliament also adopted legislation to implement the Wreck Removal Convention into Norwegian law once ratified.

Published 12 June 2019

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The legislation, which was adopted in December 2018, will, as expected, introduce a dual system where the national rules on wreck removal will continue to be in effect and the Convention rules will be introduced as a parallel set of rules.

Dual system

The authorities may under the dual system, in each particular case, choose whether wreck removal shall be ordered on the basis of the Convention, as incorporated in the Norwegian Maritime Code, or on the basis of the current national legislation found in the Norwegian Harbour and Waterways Act and the Pollution Act.

Notable differences

There are a number of differences between the existing national legislation and the Convention. For example, although the provisions are all based on strict liability, the Convention channels liability solely to the registered owner of the vessel, whereas the national legislation has a broader definition of the liable party. Furthermore, under the Convention, the threshold for ordering a wreck removal on the basis of environmental concerns is that the wreck " *may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests* " of one or more states. The threshold in the Pollution Act on the other hand is lower; it is sufficient that the wreck " *may*" cause " *damage or inconvenience*" to the environment. Another difference is that a reimbursement claim under the Convention will become time-barred three years after a hazard has been determined in accordance with the Convention. The Pollution Act has a five year deadline from the date when a final administrative decision on reimbursement has been made. It remains to be seen how these differences will play out in practice.

Direct action

Ratification of the Convention will also establish an obligation on the part of the owner to take out insurance against wreck removal liability and will create an automatic right for the authorities to claim directly against the vessel's insurer for reimbursement of wreck removal costs. This requires that the costs have in fact been incurred by the claimant, and the insurers can rely on the owner's right to limit liability under the applicable global limitation of liability rules. Since no automatic right of direct action exists under the current legislation, claims are likely to be based on the Convention provided that the stricter requirements under the Convention are met. It is however important to note that the duty to remove a wreck cannot be enforced against the insurers; their liability is of a financial indemnity nature only.

Entry into force

The entry into force of the newly adopted legislation is awaiting the adoption of various regulations, related to *inter alia* practicalities concerning mandatory insurance certificates. For the same reasons, the formal ratification of the Convention has not yet taken place. We understand that ratification of the Convention can be expected in the near future.

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We thank Wikborg Rein law office in Oslo for allowing us to re-publish this article which appeared in their "Update" for June.