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Newsletter

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pr@dupi.nl | dupi.com

New North Sea Shipping Routes

To improve the safety of navigation in the area off the coast of the Netherlands between Texel and North Hinder, the International Maritime Organization has approved extensive new and amended routing measures that were implemented on 1 August 2013 00:00 UTC (02:00 LT).



Among the changes, a number of Traffic Separation Schemes (TSS) have been revised, a new TSS will be put in place on the approaches to IJmuiden, new anchoring areas will be established and existing anchorages will be changed.

The changes are being made in order to ensure the future safety of shipping and improve access to the Dutch main ports in what is one of the world's most intensively used sea areas.

New nautical charts and ENCs detailing the changes are available and all vessels passing the area must have the new nautical charts on board now.

The main changes are as follows:

- A new Traffic Separation Scheme (TSS) – like the one already in force in Rotterdam – will be

introduced in the approaches to IJmuiden. This will ensure that vessels sailing in opposite directions have their own sea lanes.

- Routes will be located farther from the coast.
- Routes will intersect each other less often.
- Anchorage areas will be relocated or abolished.
- Space around objects (platforms, etc.) will be configured differently.
- 'Areas to be avoided' and 'precautionary areas' will be introduced. Vessels will no longer be allowed to sail in 'areas to be avoided', while vessels sailing in 'precautionary areas' will be explicitly advised to navigate carefully.

From 1 August 2013 at 0000 hours UTC the following X-Charts have been cancelled:

- **X110(INT1473)** NORTH SEA. WESTKAPELLE TO STELLENDAM AND MAASVLAKTE
- **X122(INT1472)** NORTH SEA. APPROACHES TO EUROPOORT AND HOEK VAN HOLLAND
- **X125(INT1469)** NORTH SEA. APPROACHES TO SCHEVENINGEN AND IJMUIDEN
- **X126(INT1468)** NORTH SEA. APPROACHES TO DEN HELDER
- **X1630(INT1416)** NORTH SEA. WEST HINDER AND OUTER GABBARD TO VLISSINGEN AND SCHEVENINGEN
- **X1631(INT1418)** NORTH SEA. DW ROUTES TO IJMUIDEN AND TEXEL
- **X1035(INT1046)** NORTH SEA. CAP GRIZ NEZ TO DOGGER BIGHT AND FRIESLAND JUNCTION
- **X1014(INT1043)** NORTH SEA. SOUTHERN SHEET
- **X1801** NOORDZEEKUST. DE PANNE TOT DEN HELDER



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Arrest of Vessels in Turkey

New provisions brought in under the Turkish Commercial code

Obtaining an arrest order for a vessel from a Turkish Court has been proved to be difficult in the past. The courts have been known to scrutinize all the documents/papers submitted in support of a request for arrest and any small vagueness or inconsistency could cause the application to be rejected, therefore it is highly advisable that the claim is fully supported by all the relevant and available evidence.

In recent developments, the New Turkish Commercial Code (TCC) has addressed the issue of vessel arrests. Previously it was permitted to arrest a vessel for numerous claims regardless whether they were of maritime character or connected with the ship to be arrested. However, the new code brought in an exhaustively enumerated list of maritime claims for which an arrest of the vessel can be granted, bringing it in line with the list stipulated under the International Convention on the Arrest of Ships 1999.

Another aspect to keep in mind when considering applying for an arrest order in Turkey is that the Turkish Courts generally require counter-security from the claimant either in the form of a letter of guarantee to be issued by a first class bank (unconditional and unlimited by time) or cash money. Previously the amount of counter-security was at the sole discretion of the court; however the new code requires a fixed counter-security of 10,000 SDR to be put up by the claimant regardless of the claim amount. This however can still be decreased/increased at any stage upon application of the parties.

The release of the vessel can be achieved by:

1. Lodging a security in the form of bank letter of guarantee or depositing cash; or
2. By objecting to the arrest order before the court, which is time consuming and may give rise to further damages (costs).

The new code has also introduced an exception applicable to Turkish-flagged vessels. This code states that a vessel sailing under the flag of Turkey that is already on her voyage (thus not necessarily in port) can be placed under arrest *in absentia*. The security for such has to be provided within 10 days, otherwise an order will be issued by the execution office that the vessel will have to be brought into their possession at the end of her voyage. If the vessel is not delivered as ordered then this would trigger the Turkish Criminal Code (namely the provisions dealing with misconduct of property in custody) and thus criminal repercussions will follow.

Another option which is granted to the parties under the new code is that they can decide by mutual agreement the sufficiency, form, nature and amount of the security. Although it has not been particularly mentioned, the club letters of undertaking should be formally accepted/recognised before the courts in Turkey. In that case, however, they should be accepted by the claimant.

NOTE: at the date of writing, the above mentioned new TCC and its provisions have yet to be tested in court and therefore the position should be reviewed in due course in order to analyse the effectiveness of the new provisions.

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Germany: the new "arrest paradise"?

In April of this year the German law regarding the carriage of goods by sea was amended. In the slipstream of this amendment a few provisions of the German Code of Civil Procedure (Zivilprozessordnung, ZPO) regarding the arrest of a vessel were amended as well. It follows from the official explanatory notes that the German legislator intended to create a legal situation similar to the situation in the Netherlands. By doing so Germany should become a more interesting jurisdiction. One can, however, doubt whether the current Dutch practice will ever become standard practice in Germany. The important amendments of the German code will be explained below and compared to the legal practice in the Netherlands.

The situation before April 2013

Even though Germany ratified the Arrest Convention 1952, it used to be very difficult to actually obtain a permission from a German court to arrest a vessel. One of the biggest difficulties was the necessity of the existence of a specific reason for the arrest, the so-called Arrestgrund. It followed from section 917 (2) of the German Code of Civil Procedure that there would be a sufficient Arrestgrund if a later judgment had to be enforced abroad and the judgment would not be recognized and enforceable in that country. This was quite a hurdle to overcome, as European judgements are normally recognized and enforceable within Europe. Thus, for a German creditor, for example, it was nearly impossible to obtain permission to arrest a vessel of a Dutch debtor; because from a German perspective there should not be a problem with a later enforcement of a judgment against the Dutch debtor in the Netherlands. Consequently, there would have been no Arrestgrund and therefore no permission granted to arrest a vessel of the Dutch debtor. The idea behind this was (and still is) that German law does not protect the creditor against the possible deterioration of the financial situation of his debtor.

The current situation

The aforementioned obstacle was abolished in April. It is nowadays stated in section 917 (2) of the German Code of Civil Procedure that the existence of an Arrestgrund is no longer necessary when the arrest application concerns the arrest of a vessel only (Eines Arrestgrundes bedarf es nicht, wenn der Arrest nur zur Sicherung der Zwangsvollstreckung in ein Schiff stattfindet; see [section 917](#) of the German Code of Civil Procedure). The use of the word vessel (Schiff) implies that the aforementioned sentence applies to seagoing vessels as well as inland barges. The abolishing of the Arrestgrund has for sure increased the possibility to arrest vessels in German ports.

Even though the risk of an arrest has increased, owners do not have to fear an arrest if their vessels only sail through German waters (e.g. through the Kiel-Canal). Since April it is explicitly stated in the German Code of Civil Procedure that an arrest cannot be executed during the voyage and while the vessel is not in port (Die Vollziehung des Arrests in ein [...] Seeschiff ist unzulässig, wenn sich das Schiff auf der Reise befindet und nicht in einem Hafen liegt; see [section 930 \(4\)](#) and [section 931 \(7\)](#) of the German Code of Civil Procedure). It is therefore not possible, for example, to arrest a vessel while the vessel is temporarily moored in a lock at the Kiel-Canal. Given the wording of this section, the aforementioned seems to apply only to seagoing vessels (Seeschiffe).

Despite the fact that it has become easier to arrest a vessel in Germany, one should not forget that the party trying to arrest a vessel still encounters a few practical problems. First of all, it is important to note that German courts - in contrary to Dutch courts - tend to allow the actual execution of an arrest of a vessel only if the creditor has provided a counter-security; e.g. a cash deposit, a bank guarantee from a first-class German bank or an Letter of Undertaking from a P&I Club. According to the German Code of Civil Procedure the judge has a discretionary power to grant the requested arrest permission under the condition that counter-security has been provided, even though the creditor has sufficiently substantiated the existence of his claim (see [section 921](#) of the German Code of Civil Procedure). The counter-security should safeguard a vessel's claim for compensation in case of a wrongful arrest. The bailiff will not execute the arrest if he is not provided with e.g. the original bank guarantee or Letter of Undertaking. This requirement slows down the execution of the arrest.

Furthermore, the party executing an arrest in a German port will most likely face an additional financial obstacle. The bailiff normally requests the arresting party to pay a retainer covering the expected costs regarding the vessel (e.g. harbour fees, costs regarding possible tug boat assistance, etc.). In Hamburg, for example, the bailiff normally requests a retainer of approximately € 20.000.-. In practice the arrest is often lifted against a security provided by the debtor and therefore no extra costs are eventually incurred. Nevertheless, the obligation to pay a retainer before executing the arrest forms another practical hurdle for the claimant which he would normally not encounter in the Netherlands.

Conclusion

Since April of this year it has become for sure more easy to arrest a vessel in a German port. However, in the light of the aforementioned practical obstacles, such as the likelihood of having to put up counter-security and having to pay a retainer to the bailiff, it is doubtful whether the situation in Germany will be similar to the situation in the Netherlands in the near future. One can expect that the actual execution of an arrest in Germany is more complicated and time consuming from an organizing as well as financial point of view than the execution of an arrest in the Netherlands. The current German situation therefore does not quite resemble the legal practice in the Netherlands. Nevertheless, for owners the risk of an arrest in a German port has clearly been increased due to the current amendment of the German Code of Civil Procedure.

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COLOPHON

With this quarterly newsletter we'd like to inform you on interesting topics relevant to the shipping industry and Dutch P&I.

Editors: Niels van der Noll, Monique Lardot and Frank Mathiesen.

Contributors: We'd like to thank Tania Lemkina and Jan Eckoldt for their contributions to this edition.

We'd like to hear from you. Please send your news and feedback to pr@dupi.nl.

DUPI Rotterdam (head office) | Phone: +31 10 440 55 55 | info@dupi.nl

DUPI Antwerp | Phone: +32 3 2060050 | antwerp@dupi.com

DUPI Amsterdam | Phone: +31 20 681 46 92 | amsterdam@dupi.nl

DUPI Copenhagen | Phone: +45 3315 4778 | copenhagen@dupi.com