



# Legal aspects in transportation: Maritime law and the Reporting formalities directive

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# Agenda

- **Definitions**
- **Introduction to Maritime Law aspects**
- **Significant Rules in Maritime Law**
- **Marine insurance legal aspects**
- **Maritime transport in the context of EU and the Directive of Reporting formalities**
- **Conclusions**

# Definitions



- Safe sea net: SSN is the European Platform for Data Exchange between MSs' maritime authorities. It is a network / Internet solution based on the concept of a distributed database. The main objective of SSN is to provide a European platform for maritime data exchange between maritime administrations of the MSs, by setting-up a telematic network between all the maritime EU MSs, Norway and Iceland for their co-operation in preventing maritime pollution and accidents at sea.
- Port community system : A PCS is a tool / a community system to exchange messages in port environment, having a commercial and logistic nature that has B2B (Business to Business) character.
- FAL Convention: The FAL Convention facilitates and harmonizes at global level the administrative formalities to which ships entering or leaving ports are subject. It requires the use a series of standardized forms (FAL forms), requiring information relating to the ship and its stores, information relating to crew's effects and the number and composition of the crew, together with information relating to passengers.
- Electronic data information: EDI is a method for transferring data between different computer systems or computer networks.
- National single window: The NSW Concept is the main requirement for the implementation of the RFD. It aims at meeting the generic goals of simplification and harmonization of the administrative procedures applied to maritime transport by making the electronic transmission of information standard and by rationalizing reporting formalities. A NSW is an environment for collecting and dissemination of vessel reporting information with a structured and commonly defined data structure, and rules and rights management of information, which are in accordance with relevant international, national and local legal requirements
- Port single window: A PSW is a system which provides local level information about the vessel to the authorities on a port level, that has B2G (Business to Government) and sometimes a B2B (Business to Business) character.

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# Introduction to Maritime Law Aspects

- This presentation is about Maritime law also called admiralty law, or admiralty, which is the distinct body of legal rules that governs navigation, transportation, commerce and shipping, and is a part of international commercial law. Topics associated with this field in legal reference works may include: shipping; navigation; commerce; seamen; towage; piers, and docks; insurance; maritime liens. Piracy (ship hijacking) is also an aspect of admiralty.
- Maritime law is related to many bodies of law, such as Commercial Law as it relates to commerce, and trade, Environmental Law as shipping activity may have a huge impact on water resources and aquatic ecosystems, Labour Law as seamen and other workers face difficult working and weather conditions, Transport Law, etc.
- Part of International Law is also Law of the sea, which establishes the rights and responsibilities of nations to their use of the world's oceans and territorial waters.

# Origins of Maritime Law

- Moving on to the origins of maritime law, nations have applied maritime law for thousands of years. It is one of the world's oldest bodies of law, its beginnings arising out of commerce between ancient people bordering the Mediterranean basin. Dating back to ancient Greece and Rome, maritime law codifications have been preserved throughout the years bearing many similarities, constituting a longtime maritime tradition based on *lex maritima* and *lex mercatoria*.

# Sources of Maritime Law

- The sources of maritime law include national legislation, as individual nations base their own maritime laws on the general international regulations with the modifications and qualifications they consider to be essential to their particular needs.
- Furthermore, among the sources of maritime law are European laws, Public international bodies (such as the UN, CMI, UNCTAD, IMO), Trade and professional organizations (such as BIMCO, ILO and others), international conventions and treaties, decisions of international courts and international arbitral tribunals on certain important cases, international custom.

## Sources of maritime law (cont.)

- The reference point of this body of law is the ship and all legal matters arising from its operations, and more specifically the carriage of goods and persons.
- It includes the in rem actions in vessels, ownership and registration of vessels, pollution incidents on the sea, cargo insurance.

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# Most important rules in modern maritime law

- **The Hague rules (1924)**
- **The Visby rules (1968)**
- They consist of a set of international rules for the international carriage of goods by sea.
- The official title is "International Convention for the Unification of Certain Rules of Law relating to Bills of Lading" and was drafted in Brussels in 1924.
- After being amended by the Brussels Amendments (officially the "Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading") in 1968, the Rules became known as the Hague-Visby Rules.
- There are comprised of 10 main articles. The Hague/Visby Rules were the accumulation of over a half-century of endeavors on the part of the CMI to unify the substantive law of carriage by sea.

# Most important rules in modern maritime law (cont.)

- **The Hamburg Rules (1978)**
- The Hamburg Rules are a set of rules governing the international shipment of goods, resulting from the United Nations International Convention on the Carriage of Goods by Sea adopted in Hamburg in 1978. They were drafted largely as an answer to the concerns of developing nations that The Hague rules were unfair in some respects. These concerns stemmed mainly from the fact that they were seen to be drawn up by the mainly colonial maritime nations and had the purpose of safeguarding and propagating their interests at the expense of other nations. The United Nations responded to this concern by drafting the Hamburg Rules. The Hamburg rules are far more than a simple amending of the Hague/Visby regime and came up with a completely different approach to liability. Under the Hamburg Rules, it is the carrier that is responsible for the loss or damage of all goods unless they can prove that they took all reasonable steps to avoid the loss.

# Most important rules in modern maritime law (cont)

- **The Rotterdam rules (2009)**
- The Rotterdam rules **are signed but NOT IN FORCE and NOT YET RATIFIED** but by three countries only (Congo, Spain, Togo)
- It is a treaty comprising international rules that revise the legal and political framework for maritime carriage of goods.
- The convention establishes a modern, comprehensive, uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract for door-to-door shipments that involve international sea transport
- The final draft of the Rotterdam Rules, which was assembled by the United Nations Commission on International Trade Law, was adopted by the United Nations on 11 December 2008, and a signing ceremony commenced in Rotterdam, The Netherlands (the convention's informal namesake), on 23 September 2009.



# Comparison of Maritime Rules

- International maritime rules present similarities in certain fields of maritime transport, however considerable differences exist (as each treaty was signed decades after the other) and to this respect in the following picture we compare the three most important rules with respect to the contract of carriage by sea:

<b>HAGUE-VISBY RULES</b>	<b>HAMBURG RULES</b>	<b>ROTTERDAM RULES</b>
<p style="text-align: center;"><i>Article 1</i></p> <p>In these Rules the following words are employed, with the meanings set out below:</p> <p>.....</p> <p>(b) ‘Contract of carriage’ applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which</p>	<p style="text-align: center;"><i>Article 1. Definitions</i></p> <p>In this Convention:</p> <p>.....</p> <p>6. “Contract of carriage by sea” means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.</p>	<p style="text-align: center;"><i>Article 1. Definitions</i></p> <p>For the purposes of this Convention:</p> <p>1. “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.</p>

# Dissimilarity of maritime legislation

- However, it is a fact that nowadays, still, many major shipping nations do not adopt international maritime law conventions, leading to a certain lack of uniformity in maritime legislations, due to:
- different economical, political and social objectives
- differences in national wealth
- transnational interests, shipowners, cargo insurers, freight forwarders
- preoccupation with national matters
- refusal to give up legislative sovereignty

## Towards a greater uniformity in maritime law

- On the contrary, despite the differences mentioned above the involvement of international organizations in shipping, international terminology and rules such as CMR, CIF, FOB, and international treaties which are adopted by many states have all common ground among players and factors that lead to the achievement of greater uniformity. The same sea routes, natural elements, difficulties and dangers apply to all ships, seamen, passengers, merchants and cargo, therefore national maritime legislations have truly international elements.
- For example marine insurance forms, policies and terms apply internationally to ships of many different flags and cargoes of multiple origins. The Marine Insurance Act of 1906 of the United Kingdom is the guideline of most marine insurance laws and frequently used in the United States which lack of a national marine insurance act.

# Advantages & disadvantages of uniform practices and laws

- The ADVANTAGES of uniform practices and laws as described above are:
  - Certainty and predictability of result
  - Ease in the determination and application of the law to be applied
  - Fairness
  - Economic development
  - Procedural effectiveness
- The DISADVANTAGES of uniform practices and laws as described above are:
  - Offences to fundamental principles of national public order
  - Unnecessary international laws
  - Loss of cultural diversity
- In recent years there have been many efforts at obtaining uniformity of laws in various jurisdictions. This is especially true within the European Union and its constantly harmonized market.

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# Marine Insurance

- Another great aspect of Maritime Law and Shipping is Marine Insurance. Marine insurance is a contract under which the insurer undertakes to indemnify the insured: in the manner and to the extent thereby agreed against marine losses, incidental to marine adventures. It may be defined as a form of insurance covering loss or damage to: 'vessels' or to 'cargo' during transportation.
- Connected with the risks of transportation of goods, marine insurance is one of the oldest and most important forms of insurance. The value of goods shipped by the business firms each year cost billions, these goods are exposed to damage or loss from numerous perils associated with transportation. These goods can be protected by marine insurance contracts.
- Prior to the development of marine insurance, the people across the world, had a system of pooling their contributions so that if any one of them suffers loss during voyage he would be compensated from the pool. Today marine insurance has assumed a vast dimensions due to ever expanding trade across the globe.
- Marine insurance is regulated by the 'Marine Insurance Act, 1906. Of U.K. which, dominates marine insurance legislation worldwide

# Differences between Marine and Non Marine Insurance

Insurance Law can be classified as Marine or non Marine insurance. The distinction between marine and non marine insurance is very relevant and we will proceed now to deal with the differences between the two forms of insurance:

- A contract of marine insurance cannot be enforced unless it is embodied in a formal policy. A contract of non marine insurance is required to be in no special form, and it is enforceable even if it is only oral;
- The assured may assign the benefit of a marine policy on parting with the subject matter. With the exception of life insurance policies, non marine policies cannot be effectively assigned without the consent of the insurers.

# Differences between Marine and Non Marine Insurance.....1

- Policies of marine insurance are “subject to average” in that if the assured is underinsured he is deemed to be his own insurer of the uninsured proportions. Other insurances are only “subject to average” in that sense, if expressly made so.
- The amount recoverable under a marine policy is measured by the value at the commencement of the risk and not by the value at the time of the loss. In non-marine insurance, it is the value at the time of the loss that supplies the measure of indemnity.
- Adjustments “new for old” are regulated by custom in marine insurance. Elsewhere, adjustments ‘new for old” are not so regulated, and depend upon the terms of the contract.

# Differences between Marine and Non Marine Insurance.....2

- A contract of marine insurance may be ratified after the assured has become aware of the loss. It is uncertain whether or not a contract of non marine insurance may be ratified after the assured has become aware of the loss.
- In marine insurance, a statement of fact bearing upon the risk introduced into the policy is to be construed as a warranty. In other contexts the ordinary rules of construction apply in determining whether such statements are warranties.
- Express marine warranties must be set out or incorporated by reference in the policy. Non marine warranties need not be incorporated in the policy itself.

# Differences between Marine and Non Marine Insurance.....3

- Any increase in the risk in the form of delay, deviation or change of voyage discharges a marine insurer automatically in the case of a voyage policy. In other forms of insurance, increase of risk does not affect the insurer's obligations under the policy.
- There is a statutory obligation on the assured under a marine policy to prevent or mitigate the loss. There is no equivalent duty on the assured under any other form of policy to seek to prevent or mitigate the loss.
- Marine Insurance recognizes the concept of “constructive total loss”, which allows the assured to recover for a total loss where the insured subject matter is not entirely destroyed or otherwise lost to him. There is no such doctrine in non-marine insurance law.



# Marine Cargo Insurance

- Marine Insurance is now required to protect the interest of the owner of the ship, the owner of the cargo, the person interested in freight for liabilities, and in respect of fines imposed for various reasons.
- Subject matter of marine insurance in case the ship carrying the cargo sinks: the ship will be lost along with the cargo and the income that the cargo would have generated would also be lost. it may also damage third party property, cause third party injuries or death.
- Cargo insurance 'marine cargo insurance' provides the insurance cover in respect of: loss of or damage to cargo during transit by: rail, road, sea or air. Thus 'marine cargo insurance' covers the following: export and import shipments by ocean transshipments, shipment by inland vessels, consignments sent by rail, road, air & articles sent by post.

# Warranties

- A 'warranty' is a promise by the assured to the underwriter that something shall or shall not be done or certain of affairs does or does not arise. A 'warranty' must be and literally complied with, as otherwise the insurer may avoid all liability, from the date of breach. 'Warranty' is in effect a 'safety valve' of the insurer's.
- Warranties are of two types i.e. 'Express warranty' and 'implied warranty'. Both of these warranties are to be literally complied with, by the insured.
- **"Expressed warranties"**: these are appearing in the policy itself and needs to be complied with. For example: warranted professionally packed, warranted sailing within seven days, warranted shipped under deck, warranted surveyed before shipping etc.
- **'Implied warranties'**: these are not expressed but implied and are therefore termed 'implied warranties'. For example: seaworthiness of the vessel at the commencement of the voyage and legality of the adventure. In the voyage policy on goods, there is no implied warranty that the goods insured are seaworthy.

## Implied Warranty of Seaworthiness in voyage policies

- Section 39(1) of the MIA stipulates that:
- “In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured:”
- The section refers specifically to the seaworthiness only of the ship. The common law position is that the implied warranty of seaworthiness is not applicable to lighters and crafts employed to land or discharge cargo.

# Implied Warranty of Seaworthiness in voyage policies

## Seaworthiness has many components

- Ability to encounter the ordinary perils of the seas.
- Standard of reasonable fitness
- To be seaworthy a ship is not expected to be able to weather every conceivable storm or withstand every imaginable peril of the sea.
- **Ordinary perils of the sea**
- The ship need only be fit enough to execute the “ordinary” not extraordinary perils of the sea.

“Seaworthiness” is a relative and flexible term. It varies according to the nature of the voyage contemplated. Thus a ship may be seaworthy for one voyage but not for another.

## Specific matters relating to seaworthiness:

- Machinery, equipment and navigational aids
- Sufficiency and competence of crew
- Sufficiency and quality of fuel; and
- Stability and stowage of cargoes.
- As stipulated the implied warranty only applies at the commencement of the voyage.

# MARITIME PERILS

- ‘Maritime perils’ under law is defined as: the fortuitous (an element of chance or ill luck) accidents or casualties of the sea without the willful intervention of human agency. The perils are incidental to the sea journey and that arises in consequence of the sea journey.
- Some of the insured perils are: fire/ explosion/ breakage/ Accident/ theft/ non-delivery/ collision of one ship with another ship or against rocks/ burning and sinking of the ship/ spoilage of cargo from sea water/ piracy.
- Perils that are expressly excluded by the MIA. (2) Without limiting the generality of subsection (1), an insurer is not liable for any loss attributable to the wilful misconduct of the insured nor, unless the marine policy otherwise provides, for (a) in the case of insurance on a ship or goods, any loss proximately caused by delay, including a delay caused by a peril insured against; (b) ordinary wear and tear, ordinary leakage or breakage or inherent vice or nature of the subject-matter insured; (c) any loss proximately caused by vermin; or (d) any loss or damage to machinery not proximately caused by maritime perils. It should be noted and remembered that these exclusions only apply “unless the marine policy

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# Maritime transport in the context of EU

- Maritime transport must comply with complex administrative procedures, following a wide set of international, European Union (EU) and national legislation in the fields of customs, taxation, immigration, safety and security, waste, health protection, etc. Public authorities therefore require upon a ship's arrival in and/or departure from a port, numerous documents and information relating to those fields. These formalities and the procedures to fulfill them are often considered duplicative and time consuming, resulting in costs and delays that could make maritime transport less attractive.

# Towards a European maritime transport space without barriers; Ship Reporting Formalities under Directive 2010/65/EU

- Maritime transport must comply with complex administrative procedures concerning reporting formalities , even when it relates to intra-EU transport (navigation between EU ports) and when the cargo consists of goods in free circulation in the EU.
- These procedures, formerly regulated by Directive 2002/6/EC2 , resulted in costs and delays which made maritime transport less attractive.
- To this end, the European Commission published, in January 2009, a proposal to amend Directive 2002/6/EC3 . After discussions at the EU level, Directive 2010/65/EU on reporting formalities for ships arriving in and/or departing from ports of the EU Member States was adopted in October 2010.

# The reporting formalities directive

- The Reporting Formalities Directive (RFD) applies to the reporting formalities applicable to maritime transport for ships arriving in and ships departing from ports in EU countries.
- The objective of this directive is to reduce the administrative burdens for shipping companies by simplifying and harmonizing the documentary and physical checks conducted on ships and goods moving between EU ports by:
  - making electronic transmission of information standard and;
  - by simplifying and rationalizing reporting formalities required by EU legislation, international legal instruments in particular the International Maritime Organization Convention on Facilitation of International Maritime Traffic (FAL Convention), and any other relevant national legislation.
  - The FAL Convention facilitates and harmonizes at global level the administrative formalities to which ships entering or leaving ports are subject. It requires the use a series of standardized forms (FAL forms), requiring information relating to the ship and its stores, information relating to crew's effects and the number and composition of the crew, together with information relating to passengers.

# Impact of the Reporting Formalities Directive

The Reporting Formalities Directive requires:

- The Member States to ensure that the reporting formalities at their ports are requested in a harmonized and coordinated manner, each within their country;
- The EC, in cooperation with the Member States, to develop mechanisms for the harmonization and coordination of reporting formalities within the EU;
- The master, or any other person duly authorized by the operator of the ship, to provide the competent authority with notification, prior to arriving in an EU port, of the information required under the reporting formalities:
  - at least 24 hours in advance, or
  - at the latest, at the time the ship leaves the previous port, if the voyage time is less than 24 hours, or
  - if the port of call is not known or it is changed during the voyage, as soon as this information is available

# Impact of the Reporting Formalities Directive (cont.)

- Electronic transmission of data to be made standard means that:
- EU countries shall accept electronic reports via a NSW4 as soon as possible and, at the latest, by the 1<sup>st</sup> of June 2015; The NSW will be the place where all information is reported once, and made available to various competent authorities and the EU countries;
- EU countries must ensure that information received in accordance with reporting formalities is made available in their national SSN systems and make available relevant parts of such information to other EU countries (upon request) via their (national) SSN system; However, they may exclude data for customs and border control purposes from this exchange;
- EU countries shall accept FAL forms for the fulfillment of reporting formalities and they may still accept information provided in a paper format until 1<sup>st</sup> of June 2015.

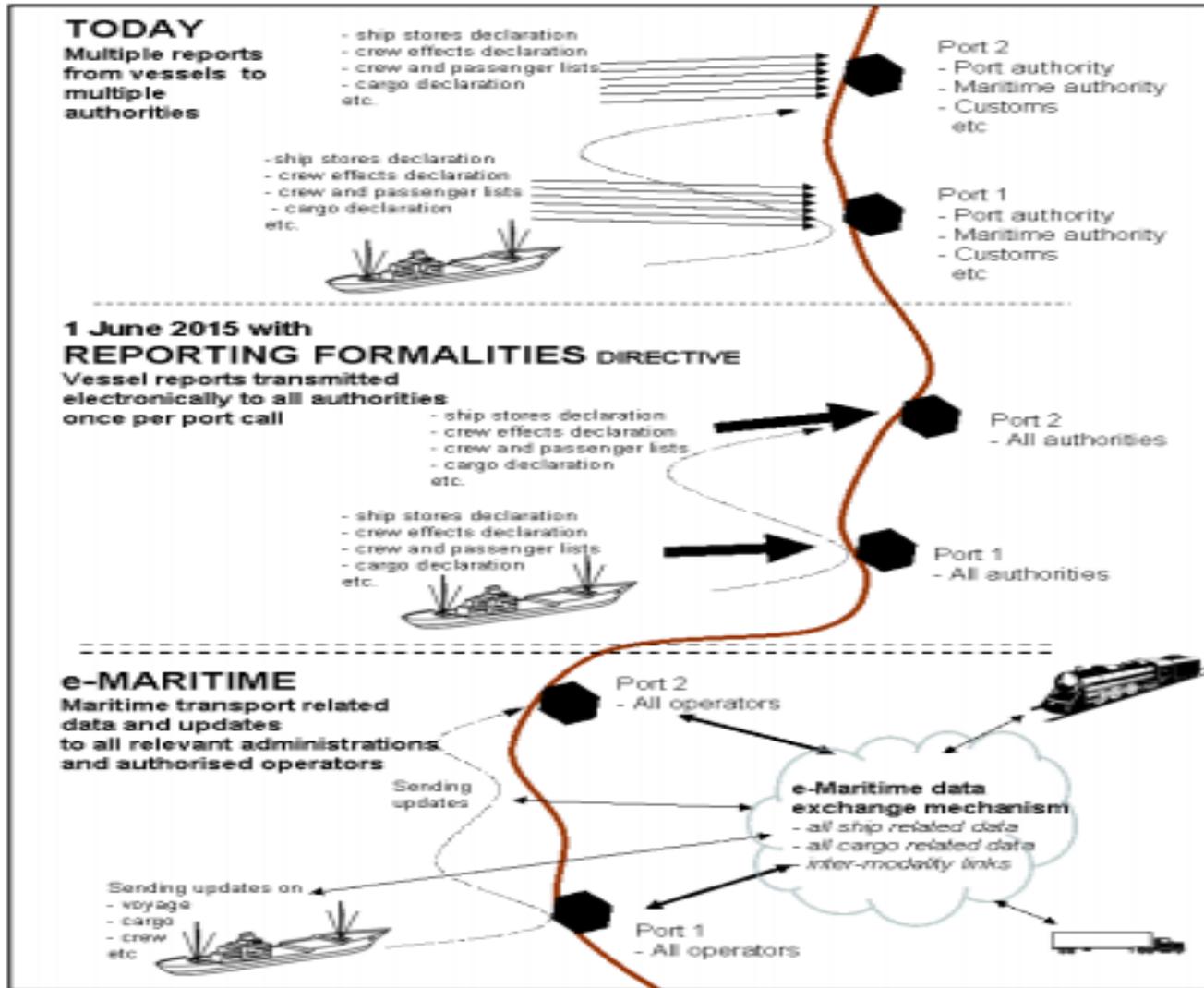
# Reporting formalities for the Maritime Transport Sector

- The Annex of the Reporting Formalities Directive contains a list of 14 reporting formalities that fall within the scope of the RFD, and which - if required in accordance with legislation applicable in a MS - are to be submitted through a NSW.
- A. Reporting formalities resulting from legal acts of the Union. This category of reporting formalities includes the information which shall be provided in accordance with the following provisions:
  1. Notification for ships arriving in and departing from ports of the Member States Article 4 of Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system
  2. Border checks on persons Article 7 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders
  3. Notification of dangerous or polluting goods carried on board Article 13 of Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system.
  4. Notification of waste and residues Article 6 of Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues
  5. Notification of security information Article 6 of Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security .Until the adoption of a harmonized form at international level, the form set out in the Appendix to this Annex shall be used for the transmission of information required under Article 6 of Regulation (EC) No 725/2004. The form can be transmitted electronically.
  6. Entry summary declaration Article 36a of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code

# Reporting formalities for the Maritime Transport Sector (cont)

- B. FAL forms and formalities resulting from international legal instruments
- This category of reporting formalities includes the information which shall be provided in accordance with the FAL Convention and other relevant international legal instruments.
  - 1. FAL form 1: General Declaration
  - 2. FAL form 2: Cargo Declaration
  - 3. FAL form 3: Ship's Stores Declaration
  - 4. FAL form 4: Crew's Effects Declaration
  - 5. FAL form 5: Crew List
  - 6. FAL form 6: Passenger List
  - 7. FAL form 7: Dangerous Goods
  - 8. Maritime Declaration of Health
- C. Any relevant national legislation Member States may include in this category the information which shall be provided in accordance with their national legislation. Such information shall be transmitted by electronic means.

# Evolutions of required reporting formalities



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# Conclusions



- There are real challenges ahead in the field of Maritime Law to be faced in the coming years. The goal to achieve through international organizations and treaties a harmonized set of Rules for most to follow, is still far away. Shipping rules have not yet reached the integration that air transport has achieved, although it is a far more traditional way for the carriage of people and goods.
- Maritime transport is a quite complex field in today's globalized environment, which has to be looked at from various view points, with many parties interacting coming from various countries and markets. A certain point of unification in laws and practices can only be achieved through further integration of Maritime Rules and shipping formalities. In this context the most important role, as we discussed earlier, belongs to organizations such as the UN, the EU, the IMO and others.
- Today there is no sufficient and detailed information available on the extent of the traffic/movement of ships from one EU port to another, or of ships calling intermediately at third country ports or entering free zones. There are however possibilities identified to gather more information in the future. The Commission should look into these possibilities and see if and how they could help to improve the quality and availability of statistics.
- The optimal use of shipping should be stimulated by avoiding or further simplifying formalities for ships that have called at a port in a third country or free zone. The recent initiatives and the development of the specific projects within EU, once implemented, should be a major step in this direction. As a next step, the Commission should look into further simplification measures by e.g. adding other (customs) functionalities to ease reporting formalities procedures
- It is feasible to extent the simplification envisaged by the Reporting Formalities Directive to inland waterway transport and to match it with the SafeSeaNet system, be it under certain conditions. The Commission should consider these and, if appropriate, address certain issues in the framework of the upcoming policy reviews and of the e-maritime initiatives.
- The Commission believes that one important element to achieve these objectives is to make better use of electronic information. National single windows will create national cross-cutting information sharing environments, enabling national authorities to access all relevant shipping information through a single point while industry needs to submit information only once. With the support of the SafeSeaNet system, relevant information can and will be shared between national single windows and consequently between Member States

... the common solution is to have **planned coordination and simplifications to reach a better and easier world of maritime transport**



# End of Session

Thank you for your attention!

Q&A