

THE CABOTAGE

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Abstract: *Cabotage is shipping made between ports, along the coast, up to a maximum distance of 100 miles to the sea. From a legal perspective, cabotage is defined as “navigation below the limits of a long course”. In terms of customs, “cabotage” is defined as the transport of native goods from a port to another port belonging to the same state, to a confederation of states or to different states, linked by customs union, using for this purpose an international maritime route or with access to such a route. “Cabotage” is divided into “national cabotage” and “international cabotage”.*

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1. THE NATIONAL CABOTAGE

According to art. 125, paragraph (1), letter c of G.O. no. 42/1997 (R1), cabotage [1] is the carriage of goods and passengers between two or more ports, on Romanian inland waterways.

Access to maritime cabotage is dependent on flag, but different laws apply to the different types of cabotage: in the case of mainland cabotage and cruise ships, the law of the flag state applies, but if the ship is less than 650 gross tonnes the law of the host state can apply. In the case of island cabotage, the law of the host state applies. Nothing has yet been settled for offshore cabotage, i.e. for non-navigable structures erected on the continental shelf.

Coastal shipping [2] (shipping near the coast) is generally performed by:

- ships with a maximum capacity of 100 TRB, which do not bear away from their port to a distance of more than 65 miles;
- barges or other means of navigation of any tonnage, hauled;
- vessels and ships of any tonnage which usually does not leave ports and basins.

Cabotage and international tramp vessel services have been excluded from the rules implementing Articles 81 and 82 of the Treaty originally laid down in Regulation (EEC) No 4056/86 and subsequently in Regulation (EC) No 1/2003. They are currently the only remaining sectors to be excluded from the Community competition implementing rules. The lack of effective enforcement powers for these sectors is an anomaly from a regulatory point of view.

For example, for a truck registered in the RO, a course with a DE-DE load is considered cabotage; instead a DE-FR or a DE-RO course is not cabotage. Short sea trade means the navigation executed between the national ports of the same sea (Toulou-Marseille, Constanta - Sulina). Long sea trade includes navigation between national ports located in different seas (Bordeaux, Marseilles).

2. THE INTERNATIONAL CABOTAGE

International cabotage means coastal navigation between the ports of different countries. UK divides “cabotage” in home trade and foreign trade, which is identical with the long distance navigation. In France and Italy, “cabotage” is international and national; the latter is divided in terms of customs in small and great cabotage.

The transportation of goods by “cabotage” is based on a permit granted by the customs, subject to customs control; in case of transit, the goods transported by “cabotage” will be presented to the customs, at destination, within the deadline provided by the law. Transport and towage in national “cabotage” are usually reserved for national ships.

Vessel masters who do “small cabotage” are not required to have a patent higher than “captain of cabotage”. Maritime transports in “cabotage” do not comply with the restrictions of the last paragraph of Art. 5 of the Hague Rules. Long-distance vessels are granted this right only for

“determined goods” which are not part of normal commercial shipments during normal trade operations.

3. COMMUNITY CABOTAGE

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof, having regard to the amended proposal of the Commission [3], having regard to the opinions of the European Parliament [4], having regard to the opinion of the Economic and Social Committee [5], on 12 June 1992, the European Parliament adopted its Resolution on the liberalization of maritime cabotage and its economic and social consequences. This resolution is in accordance with Article 61 of the Treaty freedom to provide services in the field of maritime transport is to be governed by the provisions of the Title relating to transport. They had in view the fact that the abolition of restrictions on the provision of maritime transport services within Member States is necessary for the establishment of the internal market; whereas the internal market will comprise an area in which the free movement of goods, persons, services and capital is ensured; therefore freedom to provide services should be applied to maritime transport within Member States. The beneficiaries of this freedom should be Community shipowners operating vessels registered in and flying the flag of a Member State whether or not it has a coastline. By means of this resolution, this freedom is extended to vessels also registered in Euros once that register is approved. In order to avoid distortion of competition, Community shipowners exercising the freedom to provide cabotage services should comply with all the conditions for carrying out cabotage in the Member State in which their vessels are registered; whereas Community shipowners operating ships registered in a Member State who do not have the right to carry out cabotage in that State should nevertheless be beneficiaries of this Regulation during a transitional period. The implementation of this freedom should be gradual and not necessarily provided for in a uniform way for all services concerned, taking into account the nature of certain specific services and the extent of the effort that certain economies in the Community showing differences in development will have to sustain [6].

The introduction of public services entailing certain rights and obligations for the shipowners concerned may be justified in order to ensure the adequacy of regular transport services to, from and between islands, provided that there is no distinction on the grounds of nationality or residence. Provisions should be adopted so that safeguard measures can be taken as regards maritime transport markets affected by a serious disturbance or in the event of an emergency; whereas, for this purpose, suitable decision-making procedures should be introduced. In view of the need to ensure the proper functioning of the internal market and of possible adaptations in the light of experience, the Commission should report on the implementation of this Regulation and if necessary submit additional proposals.

These devices imposed (by the European Community) the adoption of a normative act on the matter, entitled Regulation (EEC) no. 3577/92 of the Council of 7 December 1992, applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) [7].

Maritime cabotage was liberalized on 1 January 1993. In the case of France, Italy, Greece, Portugal and Spain, territorial cabotage will be liberalized gradually according to a specific program for each type of transport service. In these countries, territorial and inter-insular cabotage was not liberalized until 1999 [8].

This exception was applied until 2004 for regular passenger services and craft services with a gross tonnage less than 650 tonnes for Greece.

4. THE CABBOTAGE LICENCE

The cabbotage licence [9] is a document issued by customs to a shipping company, which allows the loading, carriage and unloading of goods without payment of customs fees, on condition that the transport is made between national ports and the handling of goods is made in a special berth.

To avoid taxes for such goods, when loading them, a document called "transit act," which accompanies the goods to the port of discharge, is issued. This act, which replaces a customs declaration, certifies that the goods are intended for domestic consumption and that they will not be unloaded in any foreign port; in the port of unloading, this document is customs evidence that the merchandise does not come from import.

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