

NEW INSIGHTS INTO CRIMINAL LIABILITY IN GERMANY FOR ILLEGAL SHIP RECYCLING

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German public prosecutors are currently investigating persons suspected of illegally dismantling ships. Hamburg Public Prosecutor Michael Elsner has provided insightful commentary concerning the criminal liability of ship dismantling under German criminal law in his recent essay *Zur Strafbarkeit des "Schiffsrecyclings", NStZ 2023, p. 135 ff.*

Notably, Mr Elsner highlights that a potential "legal loophole" exists in Germany when it comes to ship recycling as the German legislator has so far failed to enact a criminal law sanctioning the violation of the EU Ship Recycling Regulation. However, Section 18a of the German Waste Shipments Act ("*Abfallverbringungsgesetz*") offers a path to hold such behaviour to account as it allows the owners of non-EU member state flagged vessels that travel from EU territorial waters to be dismantled in a facility in country that is not subject to the OECD's control system for transboundary movements of waste destined for recovery operations (such as Bangladesh, India and Pakistan) to be held liable for criminal prosecution in Germany.

Though ship recycling does not take place in a legal vacuum, the only comprehensive set of relevant international regulations, the Basel Convention, is not adequately enforced – in particular in relation to ships. Moreover, the existing EU regulatory framework on ship recycling remains inadequate, whilst many non-EU jurisdictions have no such regime at all. A major milestone and big step forward will have been taken to address this global regulatory deficit once the Hong Kong Convention International Convention for the Safe and Environmentally Sound Recycling of Ships has come into force. Nonetheless, contracting states will have to take individual action at a national level.

Other loopholes exist in addition to the one mentioned by Elsner. In various cases, for example when a ship is shipped from outside EU waters to a non-OECD decision country for dismantling, the shipowner can avoid criminal liability in Germany. The EU flag of a ship can even protect a shipowner from punishment in Germany in certain cases.

Please click on the **DE** link to read the complete article.

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