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Portugal

Trends and Developments

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Overview

As a coastal nation, Portugal is naturally linked to the sea and has a long maritime history.

While it is true that Portugal's maritime tradition has waned in the last couple of centuries, as a result of political, economic and legislative factors, the country has recently been steadily regaining a prominent place in the international maritime arena.

Today, most of the relevant international shipping companies, particularly European shipping companies, are familiar with the features and advantages of Portuguese shipping and recognise Portugal as an increasingly important competitor in international shipping.

Measures such as the promotion of maritime transport, the development of the blue economy, the enhancement of maritime science and technology, the optimisation of sea governance and the promotion of integrated maritime policies are all part of the current government's political strategy.

Investing in the great potential of the sea is a medium-term strategy in the government's programme. The country's strategic coastal position is now perceived as one of the main assets and resources for the future growth of Portugal on all fronts. We believe it is safe to say that the sea represents the past, but also the present and the future of Portugal.

The International Shipping Registry of Madeira

It is not possible to talk about the relaunch of maritime activity in Portugal without mentioning the creation in 1989 of the International Shipping Registry of Madeira (MAR). In fact, the trends and developments that deserve most attention in the shipping sector in Portugal are, in one way or another, related to MAR and to what it represents today for the Portuguese maritime industry.

Of all the initiatives recently promoted to develop maritime transport in Portugal, MAR is by far the most successful, but also the one that has most room to grow.

MAR is Portugal's international shipping registry and was created with the main purpose of restoring national tonnage levels by seeking to offer national and international ship-owners

attractive tax and operational conditions, without neglecting environmental, labour, safety and security standards.

Considering its international vocation and the existence in Portugal, specifically in the Autonomous Region of Madeira, of a Free Trade Zone created to boost and diversify the economy of the Region, MAR was integrated into the institutional framework of the Madeira Free Trade Zone as its fourth and last sector of activity.

The Madeira Free Trade Zone or Madeira International Business Centre (IBC), as it is commonly known, is a regime fully supported by the European Union, created in the 1980s as a tool of regional economic policy. It consists of a set of incentives, mainly of a tax nature, granted with the purpose of attracting inward investment into Madeira. MAR has been steadily contributing to this goal, thanks to its substantial growth over the last five years.

In September 2019 a total of 671 ships was registered in MAR, corresponding to 15,394,202 gross tonnage. In 2018, 622 ships were registered, versus 562 in 2017.

According to information compiled and published by the United Nations Conference on Trade and Development (UNCTAD), MAR is currently the fifth largest European registry and the 15th largest in the world by gross tonnage. The latest figures released by the Institute for Mobility and Transport, show that the Portuguese merchant fleet consists of 533 vessels, 530 registered in MAR and three in the conventional register.

MAR is internationally recognised as a high-quality registry. Reports on flag state performance place Portugal among the most respected and competitive registries worldwide. This is the case with the International Chamber of Shipping (ICS), the Paris Memorandum of Understanding on Port State Control (Paris MOU), and the QUALSHIP 21, the United States Coast Guard initiative created to identify high-quality ships.

MAR – Challenges and Achievements

The growth of MAR quickly led to multiple challenges. The regime, as originally conceived by Decree-Law 96/89 of 28 March, has already undergone eight legislative amendments.

The strong competition and related quality of service, the high level of demand from shipowners, the requirements of lenders, the environmental challenges and labour concerns, among others, soon forced MAR to reconsider and review its rules and procedures in order to provide a competitive, efficient and safe regime.

In 2015 two major changes to the MAR regime were introduced: one related to the social protection of crew members of ships registered with MAR through Law 23/2015 of 17 March, and the other aimed at removing the application of the so-called “right to the mortgage purge” (*direito à expurgação da hipoteca*) as foreseen under Portuguese law.

This last amendment, implemented through Decree-Law 234/2015 of 13 October, was the result of objections expressed by several foreign credit institutions to financing vessels registered with MAR. The “right to purge the mortgage”, as conceived in Article 721 (b) of the Civil Code, is a prerogative granted to the purchaser of a mortgaged asset to purge the mortgage without paying creditors the full amounts secured by the mortgage.

This prerogative was a real obstacle to the financing of ships registered with MAR and was preventing the registration of a considerable number of vessels. The introduction of an exception preventing the application of this right in respect of vessels registered with MAR has met the expectations and alleviated the concerns of international banks.

During the course of 2019 other important measures were introduced to strengthen the competitiveness of MAR.

In June 2019, by means of Joint Order 43/2019 of the Vice-Presidency of the Regional Government and the Regional Secretariat of Education, the possibility of submitting and/or completing registration of ships outside the normal period of operation was established, provided the interested parties claim and justify the need to submit registration and/or obtain the registration titles, in writing to the Commercial Registry Office, not less than 48 hours in advance.

This measure has proved critical for the proper execution of transactions carried out in locations with different time zones. In November and December 2019, due to this new prerogative, it was possible to successfully complete complex transactions involving entities based in London, Norway, Beijing and Hong Kong. Thanks to this measure, MAR provides flexibility and high-quality service 24 hours a day, seven days per week.

In June 2019 the Vice-Presidency of the Regional Government, responsible for MAR, published Ordinance 346/2019 – which amended Ordinance 134/92 of 20 May on the registration fees

with MAR – with the aim of encouraging the re-registration of ships after their cancellation.

Experience dictates that, in many cases, deregistration is not definitive and irreversible. Therefore, provided that re-registration takes place within a reasonable period of time and that a number of other requirements as defined therein are met, shipowners whose vessels were previously registered with MAR are granted a significant reduction in the registration fee as an incentive to re-register.

Another example of MAR development and modernisation was the adoption of electronic certificates and documents for ships in October 2019. In line with national policies concerning digitalisation within public services and administration, the Portuguese maritime administration has also begun to develop and implement systems and procedures to issue electronic certificates and documents for ships.

These procedures take due consideration of the IMO guidelines for the use of electronic certificates, meaning that authorities and other relevant parties can now promptly verify the validity of the electronic statutory certificates and documents issued by Portuguese maritime authorities.

A similar process had already been implemented regarding certification of seafarers. From June 2018 seafarers’ electronic documentation, namely documents of recognition of certificates of competence in accordance with STCW/I/10 (endorsements and proof of application), were being implemented by the Portuguese maritime administration (DGRM), facilitating procedures and increasing the effectiveness and competitiveness of MAR.

MAR’s dynamism and progress also led to the creation in 2019 of a legal regime that allows armed guards to sail on Portuguese flagged vessels.

This was a long-awaited measure by shipowners with ships registered with MAR, as the existing security mechanisms were clearly insufficient to deal with piracy. On 24 October 2019, Decree-Law 159/2019 was finally published, establishing a specific legal regime proportional to the scale of the threat of piracy, in accordance with IMO guidelines and recommendations.

All the above steps and measures represent a huge improvement in MAR’s competitive offering.

MAR – Still More to Do

Despite the important initiatives mentioned in the previous section, additional measures are required to put MAR on the map in the international maritime framework. Entities operat-

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ing with MAR, whether public or private, national or international, recognise and identify the need for improvements to the current legal regime.

The Commercial Register of Ships, Temporary Registration and the Ship Mortgage, for example, need a thorough review with the aim of building a new legal framework. Not only because they are presently unable to meet market standards, but also because they do not offer the rights and privileges that other competitors are currently offering.

The modernisation of public administration, based on the use of new technologies, left out the commercial registration of ships that keeps operating based on outdated procedures. It is imperative to automate the commercial registration of vessels with MAR, from registration submission to the issuance of relevant certificates.

Likewise, it is crucial to adapt registration rules and procedures to the specific needs of MAR. The international scope of MAR justifies (and requires) the implementation of deviations and exceptions from standard registration rules, which prove to be difficult to apply in practice and are often inconsistent with the high standards of the international maritime industry.

Also, the regime of the temporary registration of the ship, contained in Decree-Law 287/83 of 22 June, does not offer a clear answer to issues that often arise when dealing with international transactions, as it was primarily designed from a domestic perspective. The lack of rules addressing the specific (international) circumstances of MAR creates uncertainties regarding key aspects of this type of registration.

Additionally, and as far as the ship mortgage regime is concerned, there are still other obstacles to overcome (beyond the now-historic obstacle of the “mortgage purge”). The regime applicable to ship mortgages in Portugal continues to receive criticism from international banks, which claim that the Portuguese regime does not offer the same level of protection and guarantees as most of its competitors.

Indeed, most of our competing ship registries are located in countries or regions that are part of the so-called common law system. Under common law jurisdictions, the holder of a mortgage has at their disposal a set of prerogatives which the holder of a mortgage subject to a civil law system, such as that of Portugal, does not have. This disparity must be addressed.

In order to compete with other ship registries, notably at a European level, MAR must offer at least the same conditions as those internationally practised.

In view of the Portuguese government’s commitment in relation to maritime affairs and the awareness-raising policy that has been developed over the last months, we believe that 2020 will be a year of implementation of some of these measures, which in fact depend on the political and legislative initiative of the government of the republic.

Finally, and beyond MAR, a broader and deeper re-evaluation of maritime legislation in Portugal is required. Much of today’s legislation is outdated, fragmented and difficult to articulate. We need a general analysis and cross-analysis of maritime law in Portugal dictated by consistent and enforceable legal regimes.

Other Relevant Initiatives

Outside the MAR framework, other measures have recently been implemented that have had a positive impact on the national maritime sector.

By Decree-Law 92/2018 of 13 November, the Portuguese government enacted:

- a tonnage tax system;
- a special tax and social security regime applicable to the respective crew members; and
- a simplified ship registry scheme for vessels.

According to the preamble of this Decree-Law, these measures aim to “promote the national merchant navy, in order to enhance the expansion of the Portuguese maritime transport market and to develop the national ports and naval industry, to create jobs, to enhance the innovation of the sector and to increase the fleet of vessels that fly the Portuguese flag, with a subsequent increase in tax revenue”. Specifically, the purpose is to “establish a set of measures to achieve the goals of increasing competitiveness, economic growth and qualified maritime employment, by creating a tax regime for shipping companies and a specific social contributions tax regime applicable to crew members, attractive to Portugal’s ship-owners and vessels, which create employment opportunities for national seafarers”.

Essentially, this regime created the so-called “tonnage tax” and, at the same time, established a set of tax and social security contribution benefits for seafarers on board vessels registered in the Portuguese conventional register or in the register of another member state of the European Union or European Economic Area.

Although this is a quite recent initiative and it is therefore premature to draw conclusions on the contribution of this special tax regime, the results so far seem to be below expectations. From a preliminary informal assessment, ship-owners and

operators (national and international) have not shown an interest in this scheme.

Its performance could possibly be related to the preferential tax regime also applicable to shipping companies licensed to operate within the IBC. In fact, Portugal has offered a favourable tax regime for shipping-related business through the IBC since 1980. It is a tested tool that has proved its economic vitality, contributing considerably to the tax revenues of the Autonomous Region of Madeira.

Nonetheless, in the long term, one expects this regime to be a valid and strong alternative in enhancing economic activities linked to the sea.

In addition to creating a special tax regime for maritime transport activities and for the crew on board eligible vessels, this regime establishes a simplified ship registry system applicable to vessels registered in the conventional registry.

The idea is to integrate the procedures relating to ownership registration carried out by the *Capitanias* and those performed by the Institute of Registration and Notary Affairs, IP. It is thought that turning to the so-called “Vessels and Seafarers National System”, created by Decree-Law 43/2018 of 18 June, will make interactions with the administration faster and more efficient, reducing bureaucracy and consequently, related costs.

The regime, therefore, foresees the dematerialisation of all registration proceedings through the *Balcão Eletrónico do Mar* (virtual desk), where applications for registrations are forwarded, according to the subject, to the competent entities, ensuring the permanent and immediate update of the acts in the “Vessels and Seafarers National System”.

Until now, information on obtaining certificates and surveys, the certification and registration of vessels, including yachts, and other facts related to maritime activity, as well as that relating to the registration of seafarers, was split in a complex and old-fashioned system, far removed from good international practices and regulatory and technological advances.

The solution envisaged by Decree-Law 43/2018 of 18 June, streamlines and improves the level of response of the authorities, based on a virtual desk where citizens and companies can request, at any time of the day, the services of the Portuguese Maritime Authorities and related entities, and receive responses in the same way.

Another strategy of the Portuguese government worth mentioning refers to ports. The port sector is now fully developed, offering modern infrastructures and port services, providing highly skilled workers and capabilities to meet significant traffic requirements, such as import/export activities and the transshipment of containerised cargo and petroleum products, natural gas and coal.

Portugal enjoys a strategic position in the Atlantic so it can (and should) assert itself as a hub in terms of ports and logistics. To this end, the multi-modality, combined transport, and the connection between rail freight transport and commercial ports should be strengthened.

Conclusion

Portugal has regained its reputation in the shipping sector through the introduction of MAR.

The 2010s were marked by a reorganisation of the maritime transport industry in the European area, which resulted in the return to European ship registers of vessels registered in third country registers. In view of this trend, Portugal felt the need to offer better conditions through MAR, making it an option to consider when deciding where to register ships.

This trend needs, however, to be strengthened and consolidated through an updated legal framework and the provision of means and instruments that will contribute to MAR's attractiveness vis-à-vis its competitors. This should be the way moving forward in the 2020s.

We are confident that the political decision-makers in Portugal are aware of the need to improve the current regime and are determined to make the necessary legislative changes to bring MAR to an even higher level.

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