

## **New Norwegian code on harbours and territorial waters**

The new Norwegian act on harbours and territorial waters of 17 April 2009 (hereinafter HTW) entered into force 1 January 2010. It replaced the former Harbour and Internal Waters Act of 1984. The HTW presents more complete regulations than the 1984 Act, and also gives more updated provisions as for the environmental issues, the commercialization of harbour operations, the need for efficient transportation on sea as well as the financing of harbour operations and discharge of public authority within the harbor as well as in the territorial waters.

A significant aspect is that the HTW charges the local municipalities with administrative authority and responsibility in the harbours within the community border and in all waters from shore to on nautical mile ahead of the baselines for the calculation of the territorial border (which is drawn 12 nautical miles outside the baseline). Every local community along the coastline has the same authority and responsibility. Under the 1984 Act only key harbours and cities along the coast were subject for this authority and responsibility. The new 2010 regime thereby involves local municipalities with no or almost no experience in handling such tasks. The need for cooperation between several communities in the various regions is obvious. Probably many smaller municipalities will seek support from the regional former key harbour authorities, mainly located in the larger coastal cities.

Regardless of the responsibility of the local authorities, the Norwegian state still execute authority and responsibility as far as the main waterways are concerned. These services require nautical resources very unlikely to find at others than the The Norwegian Coastal Administration. Norway's international obligations are also an argument for vesting such navigational authority in the State, rather than in the local municipalities. The same State dominated regime applies in the territorial waters outside the baselines plus one nautical mile.

The HTW provides legal authority both to the State and to the local municipality to take the necessary steps to meet danger caused by ships and other objects in the harbours and waters. The relevant provisions are updated and coordinated with both the new Norwegian Ship Security Act of 2007 and the Environmental Pollution Act of 1981.

Nautical charges for financing the harbour and territorial waters administration are replaced by an ordinary system of commercial consideration. The only exception is a fee for entering into harbours. This fee is meant to cover the local municipality's cost for safeguarding measures in the harbours and in the waters. In addition there is still a security fee to be paid to the State for the coverage of the same kind of costs on the hand of the State.

As under the 1984 regime the harbour's property – build up over years by contributions from the shipping business through the considerations mentioned above – is to be kept separated from the local municipality's other property and finances, and is only to be used for harbor purposes and for nautical purposes in the waters. This system is continued under the 2010 regime. This is to protect the shipping and transportation business from being a source of ordinary taxation.

The local municipality acts both as owner and operator of the harbour facilities and as public authority in the harbor and – which is new in 2010 as mentioned above – in the territorial waters. The public authority must of course be executed by the local officials in their respect as civil servants, whereas the harbour operations of commercial character may be organized in

private entities either owned by the local municipality itself or together with other local municipalities or together with private business corporations. It will probably be very frequent to see local harbour officials who acts as civil servants in one hand and as businessmen in the other. This calls for a diligent execution of services, under constant observation of the two role position.

Due to the extended responsibility of the local municipalities the State (represented mainly by The Norwegian Coastal Administration) is given a wide range of legal authority to overrule the local municipality in almost every field of harbour and waters administration. With respect to some fields this is a necessity to avoid misconduct of power, whilst on other fields this reveals an impression of distrust from the legislature versus the local authorities.

Violations of the HTW could be sanctioned by not only fines and – at more grave violations – imprisonment. There is a menu of less severe reactions, as withdrawal of licenses, administrative fines et cetera. The reactions are meant to correspond with the gravity of the contravention, and criminalization should be minimized and reserved for the more grave offences.

All in all the HTW represents an improvement compared to the 1984 Act. The HTW gives updated regulations that cover fields rested legally in “a no man’s land” under the 1984 regime. The HTW also gives the necessary flexibility when it comes to the organization and execution of the commercial harbor operations and shipping business. Hopefully the HTW will respond to the expectations from the State and local authorities, the local, national and international shipping business and from other activities in the harbours and in the Norwegian waters.