

# Market Intelligence

## SHIPPING 2020

Global interview panel led by Kevin Cooper  
of MFB Solicitors

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# France

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Leila specialises in shipping with a particular focus on cross-border litigation; she has extensive experience of settlement negotiations and proceedings before both courts and arbitration tribunals. She assists clients – from world leading companies, insurers and P&I clubs, to small businesses and individuals – with the handling of cargo claims, charterparty disputes, collisions and other sea events, pollution, shipyards' liability cases, arrests and auctioning of vessels, and personal injury claims. She also has particular expertise in dealing with disputes and initiatives in Francophone North and Western Africa.

Leila teaches the handling of cargo claims to insurers and insurance brokers at the Insurers Training Institute. She is also a lecturer on Anglo-French translations in insurance, maritime and road carriage law at the University of Paris VII.

Leila is a member of the French Association of Maritime Law and of the Women's International Shipping and Trading Association (WISTA). She has been a member of the board and treasurer of WISTA France since May 2019. She regularly contributes to publications on maritime law.

## 1 | What is the current state of the shipping industry in your country?

The shipping industry is generally performing well in France. It significantly contributes to the dynamic of the French economy, on both national and international levels.

Obviously, there are currently concerns linked to immediate or more remote consequences of the covid-19 pandemic in certain sectors, such as tourism, the cruise industry, or shipbuilding. To define the current state of the shipping industry is therefore a complicated exercise after a two-month lockdown in France, where many of the businesses and ports were forced to drastically reduce their activity.

France, with its exclusive economic zone comprising 11 million square kilometers, 97 per cent of which is in overseas territories, holds the second largest maritime space in the world after the United States. It has territories in all oceans except for the Arctic. Its coastlines exceed 19,000 kilometres. There is obviously a long tradition of fishing and sailing in French coastal areas and islands. These geographical characteristics, and the fact that a high level maritime training has been developed in France, give rise to incredible opportunities for the shipping industry and the French economy. Shipping private interests – most of which are members of the French Maritime Cluster – are putting forward these assets and are in continuous dialogue with governmental authorities to promote the blue economy.

According to the most recent figures – which do not take into account the covid-19 period yet – the maritime industry, in its wide meaning, accounts for 355,000 jobs and contributes to value-added profits of €91 billion in France. This includes a myriad of various actors and business areas which meet their specific challenges and face their own difficulties.

French shipowners operate more than 1,000 vessels over 100 gross tonnage, of which 400 fly the French flag. They include, among others, CMA CGM – the world's third largest shipping company – Bourbon one of the leading offshore oil services companies, Louis Dreyfus, which operates bulk carriers, and Orange Marine, a cable laying fleet. The French fleet is young (its average age is 10 years), highly diversified and has a reputation for excellence.

More than 78 per cent of French-imported goods are carried by sea. Every six minutes a commercial vessel enters a French port. France has 11 national ports and 185 terminals. The ports of Marseille on the Mediterranean Sea and of Le Havre in the north rank among the major ports in Europe. Despite industrial action having hampered its activities during the last term of the year, Marseille received almost 10,000 vessels and handled 79 million tonnes of goods and three million passengers in 2019. Le Havre is the leading French port for foreign trade in container traffic, with 2,173 20-foot equivalent units (TEUs) carried in 2019. Major investments have been made by the ports to support energy transition (eg, deployment of electrical



Leila Esnard

connection for ships at berth for passenger business and for liquefied natural gas (LNG) supplies in Marseille) and the implementation of highly developed technologies. Ports have encountered a significant reduction of activity during the covid-19 lockdown with thousands of containers blocked ashore and no ferry or cruise revenues, while France is usually the most visited country in the world with 32 million passengers on international lines and cruises every year.

Shipbuilding and repairs represent another key sector of the industry that had almost recovered from the 2008 crisis. According to the latest figures, this sector represents more than €300 billion in terms of orders. The order books were well filled in 2019. The trend of the shipyards is to favour high added value skills and equipment (LNG-propelled vessels, safety, energy saving concepts and designs, and highly developed technologies, among others). It includes major players such as Chantiers de l'Atlantique, which builds cruise vessels for international cruise companies; Naval Group, specialised in naval ships and submarines; Piriou, involved in the construction of smaller specialised vessels (such as tugs, scientific, offshore or fishing vessels); and a number of other shipyards dedicated to maintenance and repairs for both commercial or pleasure vessels. It is expected that the covid-19

“There is a general commitment of the government to strengthen the maritime sector, as this will be a significant area of economic growth.”

will have an immediate impact on the current orders, or in the medium term, on the volume of future orders in particular in the cruise shipbuilding sector, although Chantiers de l'Atlantique has recently confirmed it has had no cancellations of orders so far.

The fisheries and aquaculture sectors represent €150 billion. They have traditionally consisted of family businesses with small units. A number of fishermen have reached or will soon reach retirement age. The current trend is for smaller fishing trawlers to be replaced by fleets of larger vessels owned by companies. As a significant part of the fish and aquaculture business originates from UK waters, there are currently concerns arising out of uncertainties linked to Brexit. Discussions are underway in case the UK should exit the EU without an agreement. Covid-19, which led to a dramatic drop in demand for seafood, has also weakened the position of the fishing industry that has also seen increased competition in terms of price, in particular from the UK.

Finally, it is also worth mentioning that the industry is currently active and creative as far as innovation is concerned. It is particularly focused on safety, energy performance or alternatives to carbon energy. Recent innovations include

a three year expedition of an ocean catamaran using plastic waste as the sole energy (Plastic Odyssey), a 136 metre ro-ro ship propelled with a sail (Neoline Sail Cargo) and a hydrogen-propelled vessel (Energy Observer). Private interests and the government are also actively working on setting out the relevant rules and specifications to favour the development of the design, construction and navigation of maritime drones and autonomous vessels in France.

## 2 | What are the prevailing shipping market trends affecting your country?

In line with the Organisation for Economic Co-operation and Development's (OECD) projections that the world maritime sector will increase by 100 per cent during the next decade. The potential of the sector is considered to be enormous and not fully exploited yet.

There is a general commitment of the various private actors of the maritime industry and the government to strengthen and further develop the sector, as this will be a significant area of economic growth, while other parts of the economy may decelerate. A team of members of parliament (the Team Maritime) dedicated to the promotion of a French maritime policy and dialogue with private interests of the sector was created by a member of parliament, Sophie Panonacle, in 2018. In June 2020, Team Maritime delivered a report entitled 'Happy Blue Days'. The report was issued after broad consultations with the actors of the industry during the covid-19 crisis and presented measures to be adopted.

This promoted blue growth is coupled with green economy requirements. There is a general consensus that shipping is contributing to air and sea pollution while it has not done much historically to reduce its ecological footprint. In addition to a real awareness of the necessity to protect the environment, ecology is also a means for the various actors of the supply chain to enhance their reputation with their clients and, more generally, the public. For instance, last summer, CMA CGM widely announced its fleet would not use the North Sea route and it will give priority to LNG to power its future ships.

Various measures have also been enacted by the government to support positive initiatives in this field and lighten their financial burden. From 1 January 2020, additional tax depreciation measures are applicable to the purchase of vessels operating on alternative energy sources, reduced rate on a specific electricity tax to berthed vessels has also been adopted, which should induce further investments in ports for the deployment electricity connections to vessels. France has also brought before the International Maritime Organization (IMO) a proposal for the reduction of the speed of dry and liquid cargo vessels on the basis that it would significantly reduce fuel consumption and air pollution.

### 3 | Are there any recent domestic or international political or legislative developments that may have an impact on your country's shipping market?

On an international level, by setting duties on certain products as early as 2018, the United States has created strong trade tensions with China as well with the European Union. These have already had a negative impact in terms of growth of the French, and more generally the global shipping market. There is a genuine fear that these may favour the reappearance of more protectionism, tariffs and duties, and, more generally, measures limiting international trade and the global shipping market.

Another political event that impacts the French shipping market is the United Kingdom leaving the European Union, with the transition period expiring on 31 December 2020. While negotiations with the EU, hampered by the covid-19 lockdowns, are still underway, there remain uncertainties as to the conclusion of any agreement and therefore as to whether the future trade relationships with the UK will be close to the current EU market conditions or will result in competitive distortion.

One of the already visible consequences of Brexit is the recent transfer of vessels operating under the British flag to the French international flag. Such a transfer to a flag of an EU country allows the owners to ensure they remain subject to the same regulations and regime (in particular the tonnage tax).

In case of a no-deal Brexit, it is also expected that calls of vessels will be longer to process, including customs and sanitary requirements, which will cause more port congestion and higher costs. To limit this impact, French customs have started preparing for a no-deal outcome by putting in place paperless procedures to enhance fluidity and by informing businesses trading with the UK of these procedures and requirements.

Brexit also raises concerns in respect of French fishing access to British waters. British fishing grounds are among the richest in the North East Atlantic zone where 30 per cent of the French catch and, even up to 80 to 90 per cent for certain actors, is taken. Conversely, British demand is limited compared to France, Italy, Spain and Portugal; 70 per cent of British fish is exported, mainly to France, Italy, Spain and Portugal. Should no balanced agreement be found, the French fishing industry may need to make significant adjustments.

Finally, on the national level, the creation of a ministry dedicated solely to marine affairs, headed by Annick Girardin, in the new government appointed by the President Emmanuel Macron on 6 July 2020 shows the shipping industry has become a main feature of the state strategy.



#### 4 | What are the key regulatory and compliance issues for your country's shipping market? What's coming up in the near future?

The IMO sulphur cap that came into force in January 2020 was probably the most challenging compliance issue for the shipping market. The relevant French legislation provides for criminal proceedings and sanctions against owners and masters for breach of sulphur cap regulations. The authorities have made it clear that their policy is to pursue any offender.

For the past two years, the new regulation has forced shipping companies to choose between significant investments in alternatives for fuel, incurring costs to install scrubbers, or taking the risk of purchasing very low sulphur fuel oil (LSFO) at an unknown future price and with uncertain availability of compliant products.

A part of the French shipping market – especially in the cruise, passenger and container sectors – opted for developing alternative energies, such as electricity, LNG or wind power assistance. They are encouraged in this direction by tax measures implemented by the government.

Owners who opted for LSFO have faced various difficulties, such as availability and quality of the products. Overall, owners have encountered a significant increase of their costs, as the prices for LSFO fuel are almost double those for heavy fuel and the owners are not necessarily able to pass on these additional costs to their customers. Competitiveness of shipping in certain segments is therefore at stake.

The next challenge is compliance with the target set by the IMO to tackle global warming and promote decarbonised transport. CO2 emissions must be reduced by 40 per cent by 2030 and by 50 per cent by 2050. The French shipping market has started work by gathering a number of actors in a Coalition for Maritime Environmental and Energy Transition led by the French Maritime Cluster and the Public Environment and Energy Agency, whose objective is to accelerate and deploy innovative solutions to tomorrow's environmental and energy challenges. While the shipping industry seems to be prepared to assume some of the costs, this is on the condition that the IMO measures be applied worldwide to avoid any competitive distortion.

## 5 | What are the shipping industry's current sources of finance? How do you predict they will develop, and what are the advantages and challenges to financing a vessel in your country?

The financing of ships has encountered significant changes in recent years. Traditional ship financing by the banks has significantly dropped both in volume and amount. This is due to two main factors. Firstly, after the golden years, the crisis of 2008 led to overcapacity and the collapse of freight rates. These rates have increased since then but have never reached their pre-crisis level. Secondly, European regulations (Basel III) imposed increased obligations on European banks in respect of the equity ratio and, more generally, scrutiny of the risk concerned. As the ship financing sector is considered relatively high risk, a number of European banks left this business and sold their portfolio in recent years. The remaining European banks tend to be selective in the choice of the projects they finance (eg, very large crude carriers (VLCCs), containerships) or of their customers (strong existing clients).

However, new finance structures and alternative ways of financing have also been developed so as to meet the needs of the industry.

Actors have turned to capital markets. Export agencies have also provided support, either by granting loans or by issuing security or insurance. The European Investment Bank (EIB) is also becoming involved. Under a green financing scheme, the EIB guaranteed a tranche of a loan for the construction of the LNG powered cruise ferry *Honfleur*. Finally, private equity funds have also become involved, initially by creating joint ventures with shipowners and more recently by purchasing ship finance portfolios from banks.



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Asset financing through leasing and hire purchase has also become an interesting alternative. In France, combined with a tax scheme, this allows French banks to provide financing at a lower cost than a traditional loan.

More stringent measures (Bale IV) on bank capital are due to come into force in 2022 and this is a concern to the shipping industry as this may further reduce liquidity and increase the cost of financing, with more attractive lending conditions from US or Chinese banks. Small- and medium-sized owners are expected to face difficulties in securing financing.

The covid-19 period has increased the need for financing in certain sectors, such as cruise and containers. Not all shipowners will be in a position to secure the financing they need to pursue their activity and the next years will be difficult for the sector.

“In a context where the market is likely to encounter financial difficulties and insolvencies, we expect a number of ship arrests will take place in France or its overseas territories.”

6 | Have there been any recent significant domestic or foreign court decisions or arbitration awards that impact on your country's shipping market?

In a context where the market is likely to encounter financial difficulties and insolvencies, we expect a number of ship arrests will take place in France or its overseas territories.

France is known as a jurisdiction favourable to ship arrests. Although there are few diverging decisions, the most recent case law tends to show most of the courts consider it possible to arrest a ship under the arrest convention of 1952 to obtain security for maritime claims against any debtor (ie, time charterers, oil traders) so long as the claim relates to the vessel to be arrested, even when the vessel has been redelivered.

The arrest of vessels in different legal ownership 'associated arrest' is also possible.

Other recent decisions suggest France is a favourable option. In a judgment of February 2020 (*Lady Jersey*), the Court of Appeal of Aix-en-Provence confirmed that

no counter-security may be ordered against the arresting party. One month earlier, the Commercial Court of Toulon also confirmed that the definition of the maritime claim should extend to include manager's claims for crew wages and maintenance and allow an arrest (*Celcascor*).

## 7 | What is the outlook for your country's shipping market? Which sectors are likely to grow, and which not?

There is considered to be significant potential for growth. In line with the OECD's projections, the French ocean-based industries are expected to employ more than a million people, with global added value reaching €150 billion by 2030.

The impact of the covid-19 period may, however, be felt for years and there remain uncertainties in various sectors. In the short term, French banks have granted loans secured by the state.

It has, however, become clear that part of industry, such as the international cruise sector, will encounter severe difficulties, with a direct impact on port revenues (more than 50 per cent of port income derives from cruise calls) and the tourism industry.

The container sector has faced reduced demand, with part of the fleets immobilised during the lockdown period. They have, however, benefited from low bunker prices. Depending, among other things, on how the relationship with the United States develops, this sector should be in a position to recover within the next few months, as demand should return almost to normal. It remains possible that for strategic reasons, the production of certain goods will be located in national territory.

Oil tanker freight rates, such as for VLCC and Suezmax, have been positively impacted by speculation arising out of the reduction in oil demand and under-capacity of storage ashore. It is difficult to foresee how this market will evolve in the future.

Alternative energy sectors, in which France has high expertise such as LNG (LNG tank and vessel designs or building, LNG storage, distribution and carriage), are expected to develop further.

In the shipbuilding sector, beyond the building and delivery delays caused by the lockdown with immediate effect, the cancellation and suspension of orders in the short and mid-terms expected. The industry also fears that some of their customers may eventually become insolvent. It is thought that the French state will likely support the major actors of the industry with public orders subject to energy transition requirements. The French Ministry of Armies has already confirmed that the new French aircraft carrier will be built by Chantiers de l'Atlantique.

In any event, the shipping industry is being creative, imaginative and learning from this period rather than lamenting. The necessity to promote and develop

sustainable activities has become more acute and has reinforced the steps already initiated to comply with future IMO regulations. The implementation of highly developed technologies, including block chain, artificial intelligence, autonomous vessels and others, could also feature in the future shipping landscape.

Adaptability, flexibility and anticipation will be key features to meet future challenges.

With this objective in mind, the French maritime industry should continue to innovate, recruit, finance and develop those sustainable activities whether in the traditional maritime fields or in the emerging fields, as promoted by the EU Blue Growth initiative.

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# The Inside Track

**What are the particular skills that clients are looking for in an effective shipping lawyer?**

Clients expect their shipping lawyers to demonstrate fine analysis and technical legal skills with a commercially-minded and solution-oriented approach. This implies having a thorough knowledge of the shipping industry, its actors, issues and constraints. Shipping lawyers should also be able to devise clearly explained strategies and advice, with a recommendation as to whether a case is worth being litigated or should be settled. Another important skill for the client is the ability to be creative and think outside the box.

Given the nature of shipping litigation, the ability to advise, handle and coordinate complex multi-jurisdictional cases will often be a key requirement. Further, clients expect lawyers to show great availability and the ability to deliver advice or take relevant legal steps within very short deadlines.

**What are the key considerations for clients and their lawyers when arranging finance for a shipping transaction?**

For lenders, the key consideration is to ensure that the applicable law and jurisdiction will easily and rapidly allow the enforcement of debts secured by mortgages on the ship and collateral securities in case of default.

For shipowners, the finance project should allow for the availability of financing adapted to the specifics of the transaction without too cumbersome obligations and with a view to limiting costs.

**What are the most interesting and challenging cases you have dealt with in the past year?**

*The Estonia* has been a very challenging case. The sinking of the ferry in the Baltic Sea in 1994 was one of the worst maritime disasters. In 1997, 1,321 claimants commenced proceedings in France in which the shipyard, the owners, the maritime administration and the classification society were involved. After 22 years of proceedings on procedure and jurisdiction, and two decisions of the French Supreme Court, I eventually pleaded complex issues of applicable law and liability in 2019. Last summer, all this hard work was eventually rewarded as the French civil court rejected all claims against the client.

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Led by MFB Solicitors, this *Shipping* volume features discussion and analysis of emerging trends and hot topics within key jurisdictions worldwide.

Market Intelligence offers readers a highly accessible take on the crucial issues of the day and an opportunity to discover more about the people behind the most significant cases and deals.

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