Throughout history, maritime cabotage has been a sensitive political subject. Maritime cabotage is transport services to and from ports in the same country, and includes in a legal context mainland cabotage, off-shore supply services and island cabotage. Host states often wish to ensure that sensitive national maritime services are conducted in a safe and socially responsible way. Locations that rely on shipping of goods and passengers, for example, remote islands, may not get sufficient service if the shipping is left in the less predictable hands of the free market. Another factor that usually also is taken into account is the desire to protect the state’s ship owners from external competitors to ensure economic growth and social well being.

Various approaches to maritime cabotage regulation exist in the maritime world. The U.S. Jones Act serves as an example of strict maritime cabotage regulation, and has created a national market in the US known as the Jones Act market. Section 27 of the Jones Act deals with maritime cabotage and requires that goods must be carried by ships constructed in the United States and flying a US flag, owned by US citizens, and crewed by US citizens and/or US permanent residents. Aker Philadelphia Shipyards is a well-known example of a shipyard that builds ships for the Jones Act market. The maritime cabotage markets in Japan and China are also subject to strict regulation.

Due to offshore oil activity on the Norwegian continental shelf, the maritime cabotage market in Norway is of significant size. In principle this market is open for foreign registered ships and ship owners. However, non-EEA foreigners working on non-EEA registered ships are required to apply for a work permit.

Furthermore, to ensure that the Norwegian Ordinary Ship Register (NOR) is attractive to international ship owners, as compared to the Norwegian International Ship Register (NIS), ships registered in NIS are not permitted to conduct maritime cabotage in Norway. In the European Union (EU), maritime cabotage is regulated by Council Regulation 3577/92 (the Regulation). The Regulation applies the principle of freedom, and gives member states a right to provide maritime transport services to and from Member States’ ports. The Regulation liberalized the maritime cabotage market in the EU, and subsequently throughout the European Economic Area (EEA). On April 22, 2014, the European Commission passed new guidelines for interpreting the Regulation. In addition, The Commission set forth its fifth report on the free right to provide maritime cabotage between Member States.

The internal cabotage market in the EU is large. The United Kingdom, Spain and Italy have the greatest cargo traffic markets, while Greece and Italy have the greatest passenger markets. In Norway, the Regulation is implemented by the Act on Free Exchange of Maritime Services (LOV-1992-12-04-121). Article 1 of the Regulation liberalizes maritime cabotage in the EU, and EU ship owners have the freedom to operate between ports in another Member State. This freedom cannot be restricted, except in situations covered by the derogations specified within the Regulation and in “duly justified cases”. The European Court of Justice accepted as “duly justified”, a scheme of prior authorization of timetables to limit the number of ships present in the same port at the same time, due to safety reasons. The Regulation has proven to be a useful tool for increasing the cabotage market in the European Union, for example the cabotage transport between

mainland France and Corsica has had an increase in ship owners providing cabotage services after the Regulation entered into force.

There are three explicit derogations to the freedom to provide maritime cabotage in the Regulation. Firstly, Member States have the power to impose manning rules on board ships smaller than 650 gt, and vessels performing island cabotage services between two ports on their territory, cf. Article 3. Secondly, Member States may impose public service obligations and award public service contracts in order to ensure an adequate schedule of transport service to, from and between islands, cf. Article 4. Lastly, Member States may ask the Commission to adopt safeguard measures to remedy a serious disturbance of the internal market, cf. Article 5.

The new guidelines clarify which conditions a Member State must comply with to ensure that public intervention in the maritime cabotage sector is compatible with general EU rules. They provide guidance on manning rules on ships providing maritime cabotage, the award procedure for public service contracts, and the duration of these contracts. A public service contract is a contract between a member state and an EU ship owner in order to provide the public with adequate maritime transport services.

The main change imposed by the new guidelines relates to the duration of public service contracts. The previous guidelines from 2006 set a six year limit. However, this has proved to be ineffective, as a six year period did not give the service providers sufficient time to recoup the necessary investments. The new guidelines allow for public service contracts with a duration of up to 12 years. This prolonged duration may be considered proportionate as it is justified by objective criteria, such as the need to recoup the investments made in operating the maritime cabotage service under normal operating conditions.

As the guidelines are the European Commission’s interpretation of the Regulation, and not revisions of the Regulation, the legal impact is uncertain. However, in particular the new interpretation regarding the duration of public service contracts could, in our view, result in an increase in the number of ship owners interested in providing island cabotage services. This, in turn, may result in a welcomed increase in the quality of the services provided.