

Market Intelligence

SHIPPING 2020

Global interview panel led by Kevin Cooper
of MFB Solicitors

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Poland

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Maciej regularly handles cases related to transport, and in particular, cases concerning contractual disputes, as well as claims in torts. He also takes care of security and enforcement proceedings, including vessel arrests.

Piotr Rosicki is a solicitor at Rosicki, Grudziński & Co Law Firm, who qualified in Poland, having previously spent several years abroad living and studying in both London and Rotterdam. Working in the legal profession since 2004, he provides legal advice in all matters related to maritime law as well as corporate law. In both of these fields, he has taken an active role in many projects, including establishing the legal terms of the development and operation of offshore enterprises, advising in some of Poland's largest shipping and financing undertakings.

Piotr has wide expertise in civil contracts and agreements, and his practice includes complex lease and sale contracts, including agreements relating to marine vessels, maritime mortgages and service contracts in all areas of business, as well as agreements regarding long-term cooperation or investments between business partners.

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

The maritime sector is without doubt an important element of the Polish economy and emphasis has been placed on its continued development. Confirmation of this can be found, for example, in the UNCTAD's liner shipping connectivity index (LSCI). According to data collected between 2006 and 2019, in 2019 Poland recorded a huge increase not only in comparison to other countries in the region, but also worldwide, reaching a result of 51.69 points and 27th overall; a substantial improvement over its result in 2006 of 9.51 points, which put Poland in 94th position at the time. The rapid advance up the ranks of the LSCI index is a good indicator of the current condition of maritime transport companies in Poland.

Poland's focus on the steady development of the maritime sector can be seen in the creation of the Ministry of Maritime Economy and Inland Navigation in 2015, whose activities are aimed, among other things, at developing both maritime transport and port infrastructure. The latter is especially of key importance for the Polish industry due to the fact that, in recent years, the volume of cargo turnover in Polish ports has been constantly increasing.

There are four seaports in Poland that are of fundamental importance for the national economy, those being the ports in Gdańsk, Gdynia, Szczecin and Świnoujście. In 2019, trans-shipments carried out in all Polish ports amounted to a total of 108.3 million tonnes, which is a significant increase over the yield of less than 45 million tonnes just 10 years earlier. Dry bulk cargo plays a major part in trans-shipment operations, although we have observed a gradual decrease in its share over the past few years in favour of container cargo. The latter comprised over 3 million 20-foot equivalent units in 2019, which is a year-on-year increase of over 7 per cent. This increase might be connected to the expansion of the container terminal in the port of Gdańsk, which acts as a major container hub on the Baltic Sea, and is one of the 20 largest container ports in Europe. The state of Poland's ports is especially significant to national finances as the ports' turnover is directly linked to the amount of trade going through Poland and, consequently, the customs, tax and excise duties collected by the government. Due to its steady growth, this sector of the economy accounts for 10 per cent of the budget revenue per year.

Another developing aspect of Polish seaports is their increasing role in multimodal logistics. This manifests itself primarily by locating distribution and logistics centres, as well as cargo terminals, at or next to port areas. Polish ports are also increasingly becoming participants in integrated land and sea transport, and logistic supply chains.

Finally, the shipbuilding industry, which has been taking steps to rebuild itself, should be closely observed in the coming years. Currently, this sector is developing mainly thanks to the activity of private entrepreneurs. Their focus on smaller



projects has enabled them to become Europe's leading yacht manufacturer with an annual production of up to 22,000 units. In 2018, Polish yacht exports accounted for 60 per cent of total EU yacht exports. It is commonly acknowledged that these are the most cutting-edge yachts currently constructed in Europe.

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

In 2020, the covid-19 pandemic has led to a worldwide decline in activity in ports and maritime routes. As a result, the Polish shipping market, as well as thousands of Polish seafarers employed at sea around the world have experienced the negative effects of this pandemic.

However, according to an analysis by the Polish Ministry of Maritime Economy and Inland Navigation, the problems of the maritime industry caused by this crisis will, in all probability, be short-lived; in the long run, the economic situation in the maritime economy should gradually improve. According to the ministerial experts' forecasts, the entire maritime economy is highly likely to experience a strong rebound possibly as early as the end of this year.

The trend that has been visible for several years now shows that the container market in the Baltic Sea will also experience dynamic growth. The number of containers trans-shipped in Polish ports is increasing year by year and, therefore, despite the current crisis, the strategy of developing maritime transport and infrastructure of Polish ports will, in all probability, be continued without any major obstacles in order to ensure the further sustainable development of the service and trans-shipment sector, as well as improving the safety of shipping.

One of the most important undertakings planned for the coming years is the adaptation of the infrastructure of the most important ports in Poland to handle the largest container ships navigating the Baltic Sea, as well as the effective management of these ports including the introduction of innovative logistic solutions.

Other areas to be further developed by the Polish maritime sector in the near future include, among other things, research and development in the field of fossil fuels, in particular the petrochemical industry, as well as the continuing development of the renewable energy sector. Poland aims to become one of the European leaders in offshore wind energy development. In July 2020, representatives of the Polish government and entrepreneurs from the offshore wind energy sector signed a letter of intent concerning cooperation in the development of offshore wind energy in Poland. Under this initiative, huge modernisation projects have been planned in Poland in order to make Polish ports a base for these investments for the entire Baltic region. By 2025, the first offshore wind farms will be launched; built, to a significant extent, with the assistance of Polish specialised personnel and based on components produced by local companies. These plans provide hope for the thriving development of the offshore industry in Poland.

Another important growth trend in the Polish maritime economy is Poland's cooperation with its nearest neighbours. This cooperation will benefit all parties involved and is conducive to the development of the region and the more effective use of resources, as well as the development of tourism. During the summer season, recreational vessels from all over the world call in at Polish ports. The Polish maritime industry sees broad prospects for building an image of an attractive seaside destination in order to entice as many tourists as possible to come visit the country.

To sum up, in the coming years, the Polish maritime economy will undoubtedly face many technological and economic challenges which will determine the directions of development of the shipping industry especially in the areas of freight, energy, and tourism. However, the overall outlook seems to be very positive and promising.

“Despite the current crisis, the strategy of developing maritime transport and infrastructure of Polish ports will, in all probability, be continued without any major obstacles.”

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

At a national level, the most important legislation initiative currently affecting the Polish maritime industry is the 'Programme Project for the Development of Polish Seaports to 2020 (with perspectives to 2030)' (the Programme), which was adopted in September 2019.

The main objective of the Programme is to establish Polish seaports as leaders in the Baltic Sea basin, which will then act as key nodes in global supply chains for central and eastern Europe. The Programme aims to raise the ranking of Polish seaports in the international transport network through the expansion and modernisation of their infrastructure, as well as the development of land corridors (road, rail and river routes), which will ensure better accessibility to the seaports from the mainland.

The scope of the Programme mainly covers the four seaports that are of fundamental importance for the Polish economy (ie, the ports in Szczecin, Świnoujście, Gdańsk and Gdynia), and includes several significant investments, such as:

- the construction of the Central Port of Gdansk which, according to its project, is to consist of nine universal terminals that are to be developed into, among other things, passenger and cruise terminals, a chemical terminal, a liquefied natural gas terminal and a grain terminal;
- the modernisation of the fairway in the North Port of Gdansk to ensure safe bidirectional navigation for ships with a draught of up to 15 metres;
- the expansion of the fuel terminal on the seawall of the Port of Gdynia by modernising the fuel handling installation and adapting it to handle larger vessels;
- the modernisation of the Świnoujście–Szczecin waterway by dredging and widening it to accommodate larger vessels;
- the construction of a deepwater container terminal in Świnoujście, which is to serve as a trans-shipment hub capable of receiving the largest container ships that can enter the Baltic Sea – it will be the second facility of this type in Poland after the DCT Gdansk; and
- ensuring the depth of 17.5 metres on the approach track to the Port of Świnoujście.

At an international level, the objectives of the Programme are in line with the objectives set out in the Europe 2020 Strategy, particularly with respect to the flagship initiative 'Resource-efficient Europe', which emphasises the creation of modernised transport infrastructure networks.



The Programme is also in line with the objectives set out in the EU Strategy for the Baltic Sea Region, in particular the objective of developing transport connections.

The objectives formulated in the Programme are consistent with those set out in the 'White Paper: Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system', particularly with respect to the planned construction of an EU-wide multimodal core Trans-European Transport Network, which will provide seaports with efficient hinterland connections through road and rail lines based on inland waterway transport.

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

The legal regulations in Poland for all business activity related to the maritime industry are now well-established. At the same time, new legislative initiatives are constantly being introduced to change and improve the legal system concerning the maritime industry that, due to its dynamic nature, must be adapted on an ongoing basis to the technical changes occurring, or likely to occur, in the near future. Taking

into account the broad development of the maritime industry, it is extremely important that the legal regulations in Poland are properly adjusted to, and implement, the international technical standards, as well as meet the needs that might arise in the maritime industry in the future.

On the domestic front, while the Polish Maritime Code has undergone relatively few recent changes, the Act on Maritime Safety is a legal document well worth being aware of and observing. Marine safety is taken very seriously by the Polish authorities and works on implementing a safer environment are constantly being performed in order to ensure a safe environment for all participants involved in the maritime industry.

Polish regulations also put a great deal of emphasis on the importance of the protection of the marine environment. This is achieved by introducing regulations on both an international as well as domestic level. With respect to the latter, the Act on the Prevention of Marine Pollution from Ships should be noted and the 'Programme for the protection of sea shores', which introduced, among other things, the obligation to ensure minimum safety levels and set a borderline for the protection of the sea shore.

The Inland Waterway Transport Act also plays an increasingly key role for the Polish legal system concerning the maritime industry in Poland, implementing EU legislation into the Polish legal system concerning the principles and technological tools for exchange and making information available to the inland waterway transport administration bodies. For example, the Inland Waterway Transport Act has been brought into line with European Directive 2016/1629, which lays down the technical requirements necessary to ensure the safety of vessels operating on inland waterways in both Poland and other European countries, as well as the classification of inland waterways. This means a higher level of Polish safety standards in inland navigation, as well as harmonising the system of technical requirements for inland waterway vessels.

The Polish maritime industry operates and develops on par with the world's largest seaports. This also applies to research and development. Software is being developed in Poland to further digitise the handling of trans-shipments in order to enable the inspection services responsible for clearing goods to see the cargo before it arrives in the port, which will significantly improve the speed and efficiency of processing incoming cargo. Looking a little further into the future, it is expected that, in the coming decades, transport will be gradually taken over by autonomous vessels. These ships will be controlled and supervised by an onboard computer system with the appropriate software without the need for human intervention. Although there are presently no rules in place that would allow unmanned ships to operate, Poland is ready to adopt these far-reaching technical solutions and to adapt the Polish legal system accordingly.

“Software is being developed in Poland to further digitise the handling of trans-shipments in order to see the cargo before it arrives in the port.”



As one can see, legal changes and the adjustments to various regulations are being introduced on an ongoing basis in the Polish legal system. Polish legislation is currently focused on the natural environment of the sea and the development of inland navigation in Poland; however, other aspects related to the development of modern technological solutions are also very much under consideration.

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 main sources of financing for the shipping industry in Poland are loans granted either by commercial banks or, under various forms, the relevant government agencies. Over the past few years we have seen that the need to support the maritime sector has been recognised more and more, which in turn has paved the way to the application of preferential terms for financing this industry.

In the second half of past year, the Act on Financial Support for Inland Shipowners, the Inland Navigation Fund and the Reserve Fund came into force. This

act aims at enabling the development and modernisation of the inland navigation fleet by providing financial support to shipowners from the Inland Navigation Fund, while simultaneously taking into account environmental objectives.

This act introduced new financing instruments such as loans with preferential interest rates, the option to partially redeem granted loans and the possibility to refinance the purchase of ship equipment components. It should be noted that both Polish shipowners as well as shipowners from other EU countries will also be able to benefit from this form of financial support.

Moreover, due to the continuing need to develop the institutional structures financing the maritime economy sector, work on the establishment of the Maritime Development Fund was initiated. The Maritime Development Fund is to operate in the form of a joint stock company as a specialised and commercial fund aimed at supporting the infrastructure and financial resources for the development of the broadly understood maritime economy sector, primarily by stimulating the creation and development of entities financing this sector.

The above illustrates a growing tendency to acknowledge the impact that the maritime sector has on the development on the entire economy of the country; its efficiency and profitability. This in turn leads to the introduction of specific solutions aimed at real support in financing the shipping industry, both Polish and European.

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

The recent decisions of Polish and foreign courts in the field of maritime and inland waterway transport, as well as carrier liability, have been confirming an established line of jurisprudence relevant to the main issues related to maritime transport. Therefore, it is difficult to speak of a significant impact or breakthrough in shipping jurisprudence.

The Polish judiciary recently focused on administrative issues, interpreting tax and income tax legislation, particularly regarding the oversight maintained by the tax authorities and the avoidance of double taxation of seafarers employed on board seagoing vessels, and the prevention of tax evasion.

There were recent issues with the interpretation of treaties for the avoidance of double taxation concluded by Poland, as well as their practical implementation by the authorities in relation to Polish seafarers employed abroad. Currently there is a lack of real of consensus among the tax authorities as to how these taxes should be settled by seafarers. We expect this situation to be gradually cleared up in the future by the relevant decisions of the administrative courts.

The activity of the courts has also focused on clarifying those legal definitions that would facilitate the interpretation of the taxation rules by the shipowners. These have included rulings on the definition of an entity operating a ship and how it can be distinguished from the notion of a shipowner, as well as rulings concerning the definition of the place of the effective management of a ship.

On a European level, it is worth mentioning the recently published judgment of the Court of Justice of 7 May 2020 (C-641/18), which resolved the issue of jurisdiction in an action for damages against entities that carry out activities relating to ship classification and certification. It determined that, in accordance with Regulation No. 44/2001 of 22 December 2000 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the definition of 'civil and commercial matters' also includes actions brought against legal persons governed by private law whose activities relate to the classification and certification of ships and that they carry out on behalf of, and under the authority of, a third country. Current disputes will be governed by Regulation No. 1215/2012 of 12 December 2012 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, but the substance of the Court of Justice's deliberations and the thesis of the court remain valid.

The above deliberations of Polish and foreign courts have set the interpretative direction for the undefined definitions, making it easier for maritime economy entities and related industries to navigate their way through legal issues without harming or damaging their business, as well as protecting themselves in advance against any negative consequences due to discrepancies in doctrine. After all, shipping and freight exchange cannot be conducted in isolation from prevailing law.

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

The overall outlook seems to be very positive. Poland is on its way to becoming an increasingly important partner in international trade and we hope this trend remains strong in the future.

We are definitely looking forward to the development of the shipbuilding industry and Poland has great potential in this area. There are many able Polish workers with a very wide experience in the building and repairing of vessels. A large portion of them are currently employed abroad where they are refining their skills and gaining hands-on experience with the latest technologies and innovative procedures. And speaking of technology, Poland has always been very pioneering on this front and we believe this will continue in the years to come. All this sector requires are decently favourable market conditions and it will be able to develop at a very competitive pace.

“Thanks to its strategic location in the heart of Europe it is no wonder that Polish marine ports are expanding.”

We are also very optimistic as to the future of Polish shipowners and their ability to gain an increasingly larger share in the international shipping market. In our experience, these companies are managed by experienced professionals who know the ins-and-outs of their trade. They are willing to take calculated risks when necessary in order to be able to enable their companies to expand, while at the same time being conscious of not overleveraging themselves. These are the factors that are most important when it comes to securing the industry's competitiveness in relation to other countries. Poland has traditionally placed a large emphasis on the development of the shipping sector and hopefully this focus will continue in the future.

As previously mentioned, Poland is also aiming at becoming a major transport hub in central Europe. Thanks to its strategic location in the heart of Europe and with such broad access to the coast it is no wonder that Polish marine ports are expanding and the quantities of cargo coming in and out of Poland are steadily increasing. We expect this trend to continue, especially with the relatively recent undertakings such as the construction of the LNG terminal in the Port of Świnoujście, and future projects, for example, the Vistula Split Canal, and all the intra-port investments planned for the coming years.

Of course, there is a great deal that still needs to be done, in particular with respect to the infrastructure of the inland waterways to allow Poland to use its full potential in the area of transport. The issue here is that undertakings that involve improvements to the inland waterways tend to require vast amounts of funds and, in some cases, international cooperation between Poland and its neighbouring countries. These projects usually require time to be completed, therefore, we expect that the growth of the inland waterway industry to be stable, albeit not as dynamic as the aforementioned sectors.

We are also following the current situation with respect to the covid-19 pandemic and its effect on the global economy and in particular international trade and shipping. Obviously, any form of recession would greatly impact this sector and its consequences might cascade down to other areas of the maritime industry, such as shipbuilding and trans-shipments. We do, however, remain hopeful that a coordinated global effort to battle the consequences of the pandemic on both the economic and healthcare fronts will allow Poland and the European Union to overcome this crisis.

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The Inside Track

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

We believe that clients are particularly appreciative of lawyers who deliver speedy and comprehensive advice, and who choose the best solution for their client, which does not always mean that this is the most profitable solution for the legal counsel. Shipping cases often involve parties from different jurisdictions so lawyers who understand the opportunities and challenges resulting therein will be more effective. Nowadays, modern shipping lawyers should also be able to devise strategies for handling cases.

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

Over the past few years, there has been some pressure to reduce legal fees. This has been part of a general tendency to reduce costs. However, clients are still willing to pay for good legal services and are ready to accept fee schedules that promote successful outcomes. Clients usually wish to receive an approximate estimate as to the financial commitment necessary to instruct a lawyer in a particular case. Lawyers, on the other hand, might be less inclined to work on a fixed fee schedule in extremely complicated matters; the same applies to 'no win-no fee' arrangements that work well in simple cases.

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

Our team handled a dispute following the total loss of a vessel due to a major incident when undergoing repairs. We are also proud to have obtained a Court of Appeal decision concerning a point of law in a CMR dispute; this was arguably the first judgment in Poland confirming that the agreed upon place of jurisdiction is never the exclusive forum under article 31, paragraph 1 of the Convention on the Contract for the International Carriage of Goods by Road. Our team has also succeeded in an important case concerning the BIMCO Repaircon jurisdiction clause in a case following a major fire on a vessel. Finally, of note, we have dealt with a case concerning a collision on an inland waterway that resulted in major damage to its infrastructure. This case showed the need to implement legislation on the limits of liability (although our litigation team managed to release the owners from liability in this particular situation).

Lexology GTDT Market Intelligence provides a unique perspective on evolving legal and regulatory landscapes.

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.

Covid-19 impact
Financing
Sector focus
2021 outlook