

3. Classification societies and the public interest

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Introduction

'Classification societies' (also simply known as 'class') are specialised entities in the maritime industry. Originally, in the 18th century, they started out as private commercial entities that surveyed vessels at the request of insurance companies that wanted to have reliable information on the condition of the vessels they insured or were asked to insure. Following the survey of the vessel, the classification society issued a 'class certificate', describing the condition of the vessel. It quickly became clear that this information was also valuable for other parties involved, such as charterers, cargo owners and authorities.

Since then, class has become such an integral part of the maritime industry that it is entirely impossible to operate a vessel commercially if it does not have a class certificate. As any commercial vessel needed class as soon as it entered service, however, it made sense to already involve the classification societies from the very start of the ship building process. Currently, classification societies have very detailed standards and rules on how a vessel should be built. The importance of their role today is apparent from the fact that both for the IMO and the EU classification societies are 'Recognized Organisations'. Furthermore, the Paris MoU has developed an innovative instrument to measure and rate the performance of such 'Recognized Organisations'.

The central role of classification societies in the maritime industry has made that, in addition to their services for private principals (ship owners, insurance companies, ship builders), they are also instructed by flag states. Under the Law of the Sea Convention, flag states are obliged to make sure that the vessels flying their flag are in a satisfactory condition. Not all flag states however, have the resources (or the desire) to carry out regulatory inspections of vessels, and therefore tend to delegate this task to classification societies, who after all are specialised in the technical aspects of vessels and have a worldwide network of offices and correspondents.

All this means that classification societies – although still private commercial companies – today may have and fulfil (very) important public functions. The task of developing and updating technical standards for vessels has to a very large extent been delegated to them, if not formally by law then at the least in practice. When they are acting on behalf of flag states, they are performing government tasks. On the other hand, besides a group of well-respected classification societies, who have organized themselves in the 'International Association of Classification Societies' (IACS), the profession has also attracted various classification societies of lesser repute.

Classification societies thus clearly present challenges in the field of 'private regulation of/and public interests'. They are instructed and paid for by interested parties (ship owners, insurance companies, ship builders), but at the same time have to develop standards that protect the

safety of shipping and all those touched by it. Here comparisons can be drawn with the role of chartered accountants when verifying the annual accounts of companies and that of credit rating agencies in relation to the creditworthiness of financial institutions. When acting on behalf of flag states, they may have to take decisions that go against their own interests or the interests of fellow class societies. Furthermore, the question arises how classification societies perceive and evaluate their role in protecting the public interest and to what extent they are accountable to stakeholders and the general public. This project looks at how classification societies, the insurance industry, the maritime industry at large and the national and international legislators and supervisory bodies deal with this issues.

PhD project

The PhD researcher will primarily study the way in which classification societies themselves see and deal with their public functions and obligations. Are they aware of the potential conflicts of interests, and do they have structures or procedures to deal with this issue? Do they report on how they are experiencing and performing their public duties? Secondly, the PhD researcher will look at the position of the legislators and customers. Are they worried about conflicts of interests and if so, how do they deal with it.

In conducting this research, the PhD researcher will also look at possible parallels with the roles of chartered accountants and credit rating agencies, which are also private commercial companies with an important public role and the potential for major (negative) impact.

Empirical research

Some aspects of classification societies (e.g. liability for negligent surveys and/or incorrect certificates) have been the subject of case law and literature. For other aspects, there is far less material available in the traditional law sources. As part of the research project, the PhD researcher will therefore conduct interviews both with representatives of classification societies and the IACS and with various stakeholders such as ship-owners, ship-builders, the insurance industry, nautical and cargo surveyors, as well as maritime legislators and supervisory bodies.