

APRIL 2019

# QUARTERLY UPDATE

## Maritime and Transport Law

**NJORD**  
LAW FIRM



## HUGE DEBATE ON FOREIGN DRIVERS

# HOW YOU CAN BECOME COMPLIANT

The drivers' wages and labour conditions have been a common theme within the industry for some time. We have previously mentioned the so-called "IKEA case".

The "IKEA case" is still pending at the courts and will do so for a while. As many will remember, this case concerns the question of whether a Romanian driver employed by Slovakian road haulier affiliated to a Danish freight forwarder, is entitled to Danish wages and labour conditions.

The driver argues that the Danish freight forwarder has primarily exercised managerial powers because the freight forwarder was in charge of the drivers' vehicle and that the driver had the freight forwarder's address as the starting point and end point for many of the tours he performed in Northern Europe.

Likewise, pressure has been exerted on Danish hauliers and freight forwarders, who may be convicted of being complicit in the violation of the rules on driving and rest time and the cabotage rules, if there is a close managerial relationship/identity with the foreign driver who violates the rules. Read more about this in our article

> [Western High Court: Haulier complicit in violation of rules on cabotage](#)

Most recently, we have dealt with a decision concerning [labour hire and withholding of tax and AM contributions](#). Here, the issue was that a Danish haulier used foreign drivers for his

Danish-registered vehicles to carry out transport assignments that the Danish haulier had undertaken.

The High Court found that this was labour hire, as the core business of the haulage company was to carry out transport assignments, and to carry out these tasks there had to be drivers to drive the vehicles and carry out the transports.

Among other things the High Court emphasised in its justification:

## TOP 10 MOST READ UPDATES

1. [Eastern High Court: Danish haulier's use of foreign drivers is subject to the rules on labour hire](#)
2. [New act on insurance intermediation - have you remembered to re-register?](#)
3. [Are you ready for robots with artificial intelligence?](#)
4. [Practical consequences of a hard Brexit - in general](#)
5. [Mobility Package rejected by the European Parliament](#)



**that** the haulier overall and daily was in charge of the overall management;

**that** the haulier had the power to exercise control over the drivers, as all the planning of the transports were handled by the haulier, which according to the court had to be considered the most important for the exercise of the powers to manage and control;

**that** the haulier bore the risk and responsibility for the performance of the work, as the company entered into all the transport agreements with the customers at the same time as the haulier owned the vehicles and thus both according to the Danish Road Traffic Act and the rules on international transport was liable to customers and the authorities.

In its justification, the High Court also emphasised that the drivers drove in the haulier's Danish-registered vehicles, as the High Court noted that the work was carried out at a workplace the haulage company was in charge of and was responsible for.

Thus, the Danish haulier should have withheld taxes and AM contributions for the foreign drivers.

As can be seen, there are some common threads in these judgments that relate to the following:

- How close the foreign haulier and drivers are to the Danish haulier/freight forwarder.
- Are the management identical and who exercises the daily management of the drivers?
- Who carries the risk and responsibility for the work?
- Are the drivers particularly attached to the Danish company by also physically starting and closing tours at the Danish company?
- Are the drivers primarily in Denmark, for example?
- Is the Danish haulier's production equipment - the vehicles - used for carrying out the transports?

Any Danish transport company should carefully review the way work is managed and logistically organised, so lessons drawn from the cases mentioned above are considered and so that surprises both in terms of wages, tax and criminal law are avoided.

6. [Advocate General: German motorway toll is not in violation of EU law](#)
7. [Rail transport: A golden middle solution](#)
8. [You should register your floating offshore wind turbines](#)
9. [Smart contracts within shipping](#)
10. [Haulier liability and gross negligence](#)



## CHAMBERS & PARTNERS

# NEW, STRONG RATINGS

Every year, Chambers and Partners rank the top lawyers and law firms, and they have just published their ratings for 2019. This year, NJORD's Maritime and Transport Law Team's rating has improved significantly.

In recent years, the department has been recommended in band 3 in the category Europe, alongside many of the leading European law firms.

### Personal rating

Again, this year, attorney at law and partner Ulla Fabricius is highlighted in band 2 as a Notable Practitioner within maritime and transport law. A client describes Ulla, as "friendly, solution-oriented and strategic." Another says, "She knows everything to do with shipping and transportation law."

Chambers also highlights; "She has extensive experience in both contentious and non-contentious mandates, and often assists with cargo claims. She also frequently acts on ferry-related matters."

### Promotion

This year, the department has moved up to band 2, which means that the department is in the second-highest group on a European scale and is among the top five shipping departments nationally. This is a result we are proud of.

In addition to her rating as Notable Practitioner within shipping, Ulla is on the Legal 500's Hall of Fame list – an extremely rare and prestigious compliment within the rating of the legal profession.

> [Read the interview when Ulla was inducted into the Hall of Fame](#)

Several of NJORD's departments have achieved strong positions proving that NJORD is among the best law firms both nationally and internationally.

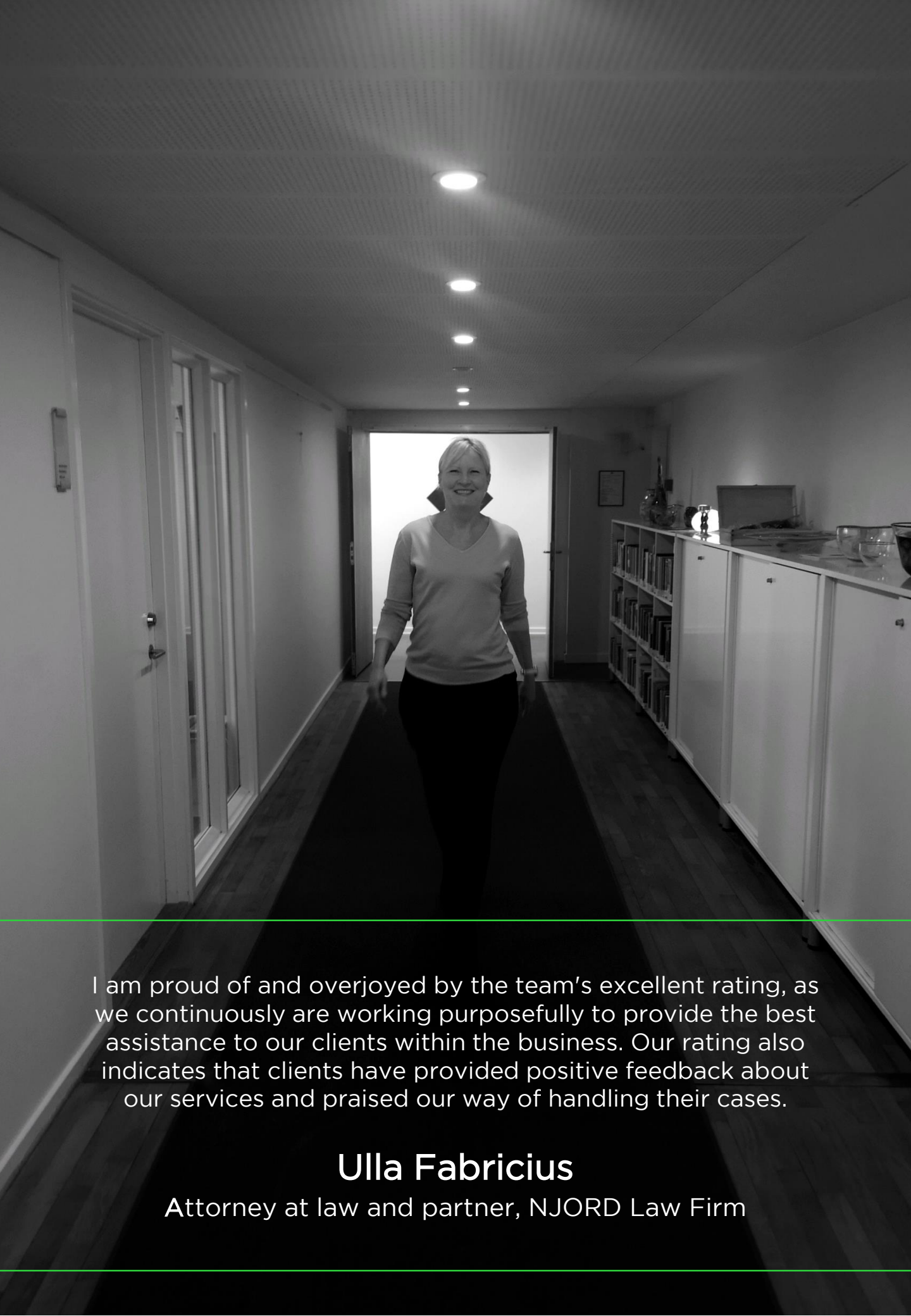
> [See all NJORD's ratings here](#)

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The team advises on a wide range of shipping-related matters, including marine insurance, damage to cargo, demurrage and insolvency-related claims. Additionally, the team handles shipping-related M&A, often with cross-border elements. Clients include major ferry companies, as well as other Danish and international shipping and insurance companies and P&I clubs.

## Chambers and Partners

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I am proud of and overjoyed by the team's excellent rating, as we continuously are working purposefully to provide the best assistance to our clients within the business. Our rating also indicates that clients have provided positive feedback about our services and praised our way of handling their cases.

**Ulla Fabricius**

Attorney at law and partner, NJORD Law Firm

## UPDATE

# Blockchain, cryptocurrencies and smart contracts within shipping

Blockchain technology has received a lot of attention over the past few years. Many agree that this technology can revolutionise transactions, among other things because cryptocurrencies via so-called smart contracts can be configured to execute a transaction when certain conditions are met automatically.

As another critical feature of blockchain is securing a permanent, immutable and indestructible protocol (ledger), there has also been high expectations to what blockchain could mean for the document and documentation heavy transport industry.

If a blockchain bill of lading or equivalent transport document is combined with a number of smart contracts, among other things with the possibility of automated transactions, the potential for savings and streamlining related to international trade is enormous, but the development does not fully meet expectations.

## Voltron

Project Voltron is an interesting project that has made it pretty far. Several international banks with, among others, ING, Bangkok Bank, BNP Paribas, CTBC Holding, HSBC, NatWest, SEB and Standard Chartered are behind the project.

Voltron is basically a blockchain based letter of credit, which in many ways serves as a traditional letter of credit, except with blockchain updating.

This allows for better transparency and higher speeds. This is a smart initiative from the banks, as banks are the intermediary the technology may replace. The first transaction in Voltron was completed in May 2018, and since then, Voltron has been joined by several platforms seeking to address the same challenge in international trade using blockchain technology.

Voltron's biggest weakness is that it is only a *ledger*, and thus not much more than a simple digitised version of the documents. In principle, banks could retain information in a traditional IT system, and the functionality would basically be the same. However, the project illustrates the resources that are being devoted to the development of this area.

## Blockshipping

From a Danish perspective, Blockshipping is an interesting project. It is highly specialised with a focus on creating a marketplace for exchanging container services.





Unlike Voltron, the intermediary here has been replaced by a platform. A stable coin counters the price fluctuations associated with cryptocurrencies which significantly prevent established players from using this as a means of payment. In reality, a token ('a token' is just the word used to describe a crypto unit that represents a value – e.g. one bitcoin is a token) that can always be redeemed for 1 USD. This allows trading on the platform in USD and transactions across borders are immediately carried out without the involvement of banks.

In many ways, this project appears to be more suited to meeting some of the promises that blockchain technology entails. According to the latest statement, however, it has only generated 1/10 of the capital that was the aim of their ICO, which expired in December 2018.

## Nothing but hot air?

Several of us probably remember how excited we were about the electronic bill of lading system suggested back before the dot.com bubble burst, and we are still waiting for it to be widely used.

That system faced the same challenge as, among

others, Blockshipping is facing now. The success of the system is dependent on whether it is generally adopted. There is a scaling hurdle that cannot be overcome merely by having a good idea that ultimately benefits everyone.

Voltron does not have this issue, as the stakeholders behind it have access to an extensive existing customer portfolio and not least considerable capital to invest. Also, the system is capable of creating short-term, one-sided incentives for the individual user. Voltron's strength, however, is also its weakness. The stakeholders behind, who are banks, are likely to prevent the banks as intermediaries from exiting the system.

Thus, the market still has room for solutions that can both abolish the trusted (and expensive) third party and solve the scaling problem. To do this, one has to think outside the box and not least consider new collaborations.

Who says the banks have to deliver the trading solutions or the transport sector has to invent the blockchain-based bill of lading? Disruption usually comes from other sectors, and it is our opinion that shipping has the potential to "disrupt" the banking sector.



## AI, DRONES AND ROBOTS

# Are you ready for robots with artificial intelligence?

Intelligent robots are becoming part of our everyday lives, and we will interact with AI both physically with robots and online.

> [Read more about how robots are becoming part of our everyday lives](#)

Are the current rules of society adequate and sufficient to handle the challenges involved? Attorney Steffen Hebsgaard Muff and assistant attorney Simon Petersen have written a legal article about the liability for damage caused by autonomous robots. The article is published in the Danish Erhvervsjuridisk Tidsskrift (*Commercial Law Journal*) (ET.2019.2) and where the issue is analysed based on current Danish law. The article concludes that currently, the legal position is neither clear nor up-to-date.

In the complete absence of a clear legal position on the responsibility for autonomous robots and AI (artificial intelligence), the owner, manufacturer and other parties involved should contractually address liability issues etc.; insofar this is permitted under the current rules.

In this regard, the following issues, in particular, should be considered by the parties:

- Disclaimers. In particular, it must especially be considered who ultimately has to bear any liability for damages.
- Insurance schemes where all relevant risks are insured.
- Detailed manuals, user guides and end-user agreements.

- Special precautions. For example, signage with warnings about robot activity on construction sites and the like.
- Data management
- Relevant approvals. For example, the existing requirements in the drone area for drone licenses and certificates as well as owner registration.

> [Read more about the drone requirements](#)

### Missing rules on robots and AI

It is a prerequisite for the companies and people who will use, or already use, intelligent robots and software that the rules are clear and concise so that the risks of incurring liability are known in advance. Unfortunately, the current legislation has several shortcomings concerning units such as autonomous robots that evolve and act independently without human interference.

> [Read more about missing regulation of bid robots](#)

The way damages are regulated in Denmark can be traced back to Roman law and is based on culpability. This means that a person can only incur liability when he or she has made a mistake. This system, which appears very fair, presents a number of challenges. Who is liable when the robot has developed "in an unfortunate manner" or learned something "the wrong way"? – Can it be proven at all that a mistake has been made – and if so, what the mistake specifically is?



As robots become more and more autonomous, including becoming able to collect and store data independently to improve, the question of where the liability lies is becoming increasingly complex.

A system that relies on human culpability is difficult to apply in situations where no human involvement has occurred. The concept of a defect as we find within the rules on product liability cannot accommodate all cases where robots with AI (artificial intelligence) cause damage either.

### **Legislation on autonomous robots**

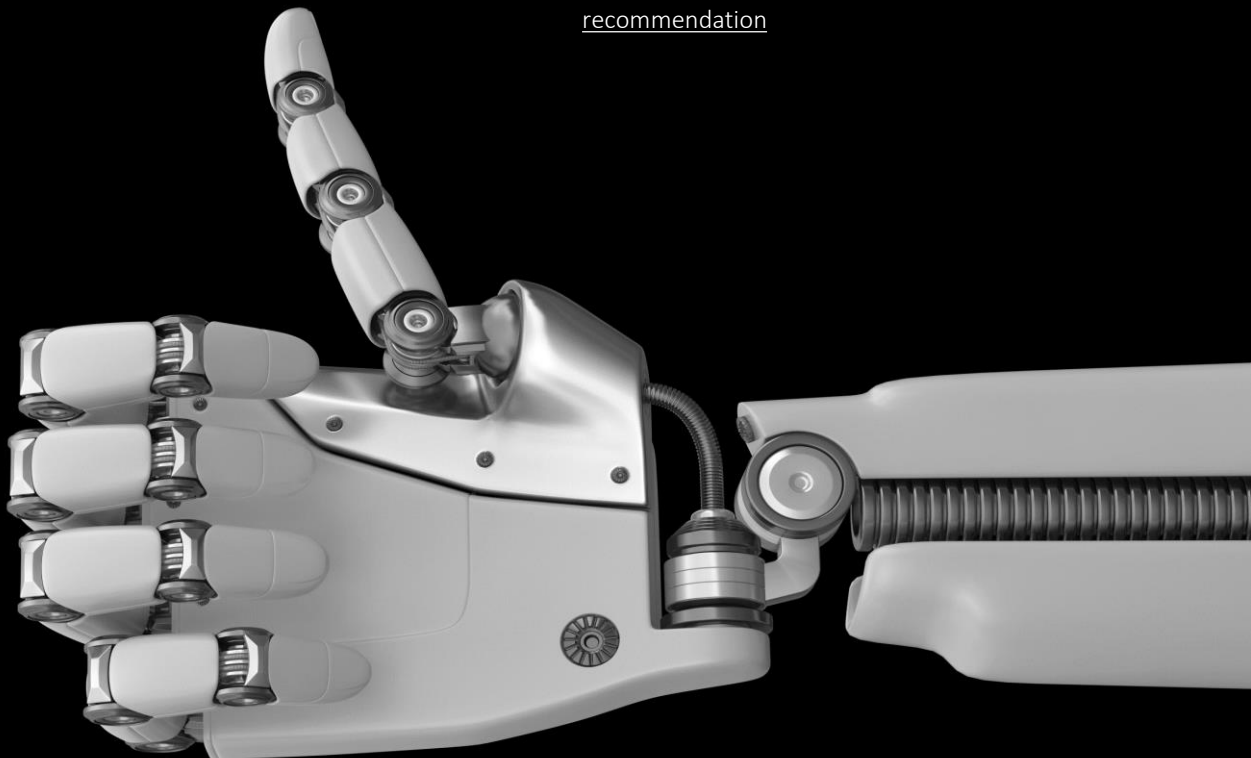
The most appropriate would be to introduce a general system of objective liability for damage caused by autonomous units and to impose

insurance obligations accordingly.

Such a system should ensure that the injured party is compensated directly by the owner or operator of the robot and should at the same time exclude claims against previous links in the chain such as dealers and brokers of the robot. The owner of a robot knows how the robot is used and is, therefore, best to assess the risk and draw proper insurance.

Given the uncertainty of the legal situation in the area, the European Parliament, on 24 January 2017, recommended to the European Commission that the Commission should establish a regulatory framework to regulate the liability for robots. Obviously, this issue should be addressed by the EU, as the EU already governs product liability.

[> Read the European Parliament's recommendation](#)





# BREXIT

The United Kingdom (UK) is still on the verge of leaving the EU without an agreement on future cooperation with the Union, but European leaders have now given the UK another postponement until 31 October to reach an agreement.

On 29 March, the British Parliament rejected four alternative proposals on the withdrawal from the EU. The risk of a “hard Brexit” after the recent postponement still lingers if the British Parliament and the EU cannot agree on a divorce agreement.

Withdrawal from the EU without an agreement will mean that the import and export of goods from and to the UK will be subject to the general customs and tax rules applicable to trade with third countries.

For example, many have feared very high tariffs when exporting goods to the UK. Many were relieved, however, when the British government presented a long-awaited plan for these rates, which are significantly more moderate than feared.

You can read more about the tariff rates and the other consequences of a hard Brexit [here](#).

**GET AN OVERVIEW**

# NJORD LAW FIRM NEW TECH



## EPISODE 1.0

## NEW VIDEO SERIES UPDATES YOU ON TECH

### IT IS HELD THAT **The robot is guilty**

The system of liability is continuously challenged as technology develops.

"Today, we have a system that basically is based on human culpability. It can be difficult to apply in situations where no human involvement occurs," says attorney Steffen Hebsgaard Muff, who is head of NJORD's New Tech team.

[> Read the article in Samfunds Design](#)

### COMMERCIAL LAW JOURNAL **Robots, legal status and regulation**

In a legal article in Erhvervsjuridisk Tidsskrift (*Commercial Law Journal*), attorney Steffen Hebsgaard Muff and assistant attorney Simon Petersen focus on the liability for damage caused by autonomous robots. Who is responsible when a robot causes an injury? There is no clear legal position on the liability, they conclude.

[> Read K-news' summary of the article](#)



## PASSED THE BAR EXAM

# CHRISTIAN SCHAAP

On 5 March 2019, Christian Schaap, an assistant attorney with NJORD's Maritime and Transport Law Team, passed the practical bar exam and as of September, he will be an attorney at law when he is granted admission to the Bar.

Christian conducted the main proceedings of a case before the Danish Maritime and Commercial Court after obtaining the authorisation to argue cases before the court. Christian was very excited about the exam, and it went well. Currently, we await the delivery of the judgement in the case.

### Christian's future with NJORD

Christian will continue at NJORD Law Firm as an attorney when is granted admission to the Bar in September. Then, everyday life will offer numerous court cases, but probably also a posting to England, where Christian previously studied maritime law for his master's degree.

Christian is driven by international legal matters, and when he applied to work for NJORD Law Firm, it was also the prospect of working with, among others, Christian Benedictsens-Nislev, who is an English solicitor, that appealed to him

"Both Christian Benedictsens-Nislev and Ulla Fabricius are leading names within maritime and transport law area. It is a privilege and very exciting to have the opportunity to work with them, as interesting cases are often presented and handled", recounts Christian.

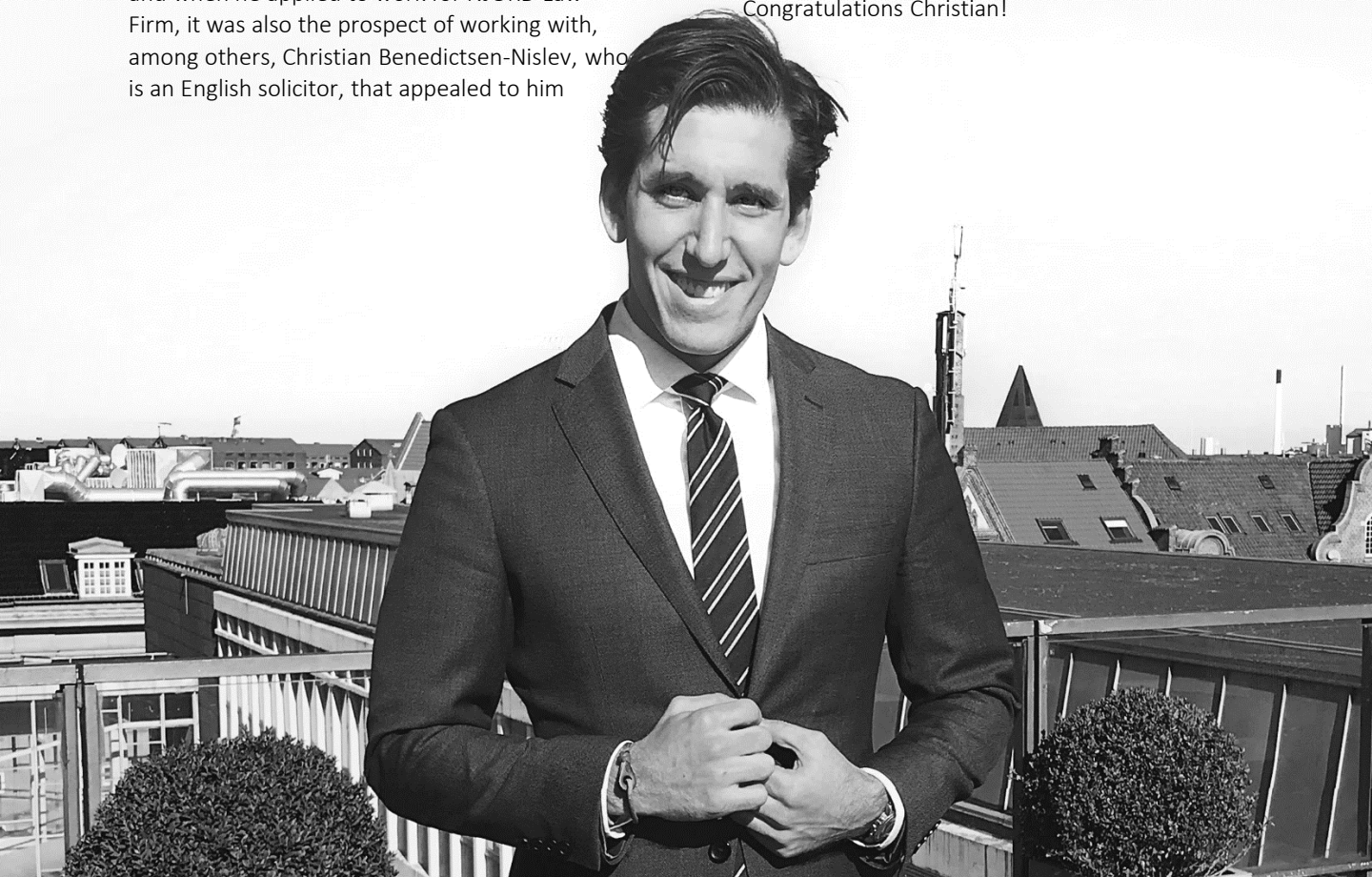
### We are passionate about what we do

According to Christian, being part of NJORD Law Firm's Maritime and Transport Law Team is a unique opportunity.

"The team is characterised by excellent teamwork, where good professional sparring with other team members as well as knowledge sharing is always available. The whole team is very professional – everyone is passionate about what they are doing and is focussed on being the best in the area. "

At NJORD, we are delighted that Christian also will continue to develop and strengthen NJORD's Maritime and Transport Law team in the future.

Congratulations Christian!



## **NJORD ROOFTOP EVENT**

# **Summer Business Networking**

MDC and NJORD Law Firm host Summer Business Networking on NJORD Law Firm's roof terrace in the heart of Copenhagen.

MDC will once again establish a "Speaker's Corner", where two experts will give short power talks. In between the presentations, there will be time to network and enjoy a glass of wine and a light dinner.

Come for an hour or stay all afternoon and enjoy inspiring conversations, expand your horizons and share your passion for maritime and transport law!

We look forward to welcoming you at the summer's best maritime network event!

### **TIME & VENUE**

6 June at 4 to 8 p.m. on 6<sup>th</sup> floor, Pilestræde 58, 1112 Copenhagen K.

**SIGN UP HERE**





**NJORD Law Firm**

# **Maritime and Transport Law Team**



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