

## Starboard tack : what is the power of this rule ?

1. Distribution of powers between the judicial court and the French Sailing Federation
2. Interpretation of the racing rules of sailing / the COLREG by the judicial authority

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### **1) Distribution of powers between the judicial authority and the French Sailing Federation**

The French Sailing Federation is a sport and a national authority in charge of a public service: the sailing organisation. Indeed, the French Federation detains a delegation of power from the executive.

Regattas organised by the French Sailing Federation are governed by the racing rules of sailing and the International Regulations for Preventing Collisions at Sea 1972 (*COLREGS*). Moreover they are regulated by the Law of July 7<sup>th</sup>, 1967 relative to events at sea which only incriminates the ship (*that is to say its owner*). The racing rules of sailing adopted by the French Sailing Federation are the internationally recognized racing rules created by the ISA (*International Sailing Federation*).

For the implementation of these rules, the French Sailing Federation constitutes juries whether national or international according to the importance of the race; these juries get together under its authority.

Although the nautical skills of juries is probably more hardened than the one of the magistrates, the fact remains that it belongs to the judicial authority to resolve the case and to pronounce on the liability. Judges, notabl in the ruling of 12 October 2011, confirmed this statement: "*questions of damages caused by a breach of any of these rules shall be governed by requirements, if any, of the national authority*".

Beyond this division of powers between the French Sailing Federation which applies the racing rules of sailing and the COLREGS, and the judicial authority which is responsible for questions of liability, it also returns to the judicial authority to interpret the liability rules.

### **2) Interpretation of the racing rules of sailing / the COLREGS by the judicial authority**

Judges have jurisdiction to interpret the Racing rules of sailing. In this aim, they take into account the specificity of the maritime navigation, of the racing rules of sailing and the specificity of the regatta organisation. Thus judges analyse the right of way ([Article 10 to 13 of the Racing rules of sailing](#)) and shall conclude on the identity of the ship at fault. Moreover, as judges implement the mechanism of liability, they may also decide to share liabilities between the ships involved in a collision. It is furthermore on this point that their power of interpretation is the most shown.

For instance, in the judgment of 2011, basis of our report, the right-of-wayvessel was at fault according to article 17 of the COLREG and article 14 of the Racing rules of sailing (*The jury of the*

*French Sailing Federation has previously excluded the not right-of-way vessel of the regatta for non compliance with the Racing rules of sailing).*

– [Article 17 of the COLREG](#)

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*(a) (i) Where one of two vessels is to keep out of the way, the other shall keep her course and speed.  
(ii) The latter vessel may, however, take action to avoid collision by her maneuver alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.*

*(b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.*

*(c) A power-driven vessel which takes action in a crossing situation in accordance with subparagraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.*

*(d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way”.*

– [Article 14 of the Racing rules of sailing](#)

*« A boat shall avoid contact with another boat if reasonably possible. However, a right-of-way boat or one entitled to room or mark-room*

*(a) need not act to avoid contact until it is clear that the other boat is not keeping clear or giving room or mark-room, and*

*(b) shall not be penalized under this rule unless there is contact that causes damage or injury.».*

However, judges held that the very short delay between the observation (*the necessary action to avoid collision*) and the collision (60 seconds) as well as the manoeuvrability and size difference between the two vessels engendered a limitation of the liability of the right-of-way vessel to only 20%