



Social Protection of Seafarers – The case of the EU

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Summary

- Introduction: ETF/WMU mapping exercise on EU-based seafarers' social security rights
- Principles of social security
- Access to social security by seafarers
 - In accordance with the MLC, 2006
 - In accordance with the EU Regulations on Social Security Coordination
- Examples
- Preliminary conclusions

Basic principles

- Coverage provided by countries depending on their socio-economic circumstances
 - ILO C102: **at least 3 branches** out of 9
- **One stop shop principle**: contributions paid to only one country in case of cross-border workers
- **Country coordination principle** to ensure that cross-border workers benefit from a comprehensive coverage

Case by case approach

Access to social security by seafarers

Flag State Jurisdiction

- However
 - Some flag States specifically **exclude** foreign seafarers from their social security system
 - Other flag States include them, but **only** provide them with **some** branches
 - C-465/14, *Raad van bestuur van der Sociale verzekeringsbank v f. Wieland & H. Rothwangl*
 - **Lack of effective country coordination** against a backdrop of **short-term contracts/ change of flag**
 - Outcome: **only private insurance** for a significant No.

Reg. 4.5, St. A4.5 and 5.3 MLC, 2006

- St. A4.5, para. 3:
 - Each Member shall take steps according to its national circumstances to provide the complementary social security protection referred to in paragraph 1 of this Standard to **all seafarers ordinarily resident in its territory**. This responsibility could be satisfied, for example, through appropriate bilateral or multilateral agreements or contribution-based systems. **The resulting protection shall be no less favourable than that enjoyed by shoreworkers resident in their territory.** **In line with Reg. 4.5.**

St. A4.5, para. 5 – Flag State subsidiary responsibility

EU Social Security Coord. Regulations

- **Flag State principle**
- However, the country of residence if
 - Shipowner and seafarer are residing in the same EU country
 - Shipowner and seafarer working on board non-EU flagged ship are residing in different EU countries
 - Seafarer residing in an EU country and working for different shipowner or on board different foreign-flagged flag vessels, the country of habitual residence is again preferred provided that a substantial part of their activity is undertaken in that country

Seafarers residing in any EEA country and working on board of:	Flag state principle	Habitual residence principle
EEA/EU-flagged ships	Seafarers residing in any EEA country	Exception to flag State principle if shipowner and seafarer reside in the same EEA/EU country
Third-country flagged ships		<p>If both shipowner and seafarer reside in different EEA/EU countries, then:</p> <ul style="list-style-type: none"> - HR of seafarer if a substantial part of the work is done there - Otherwise, HR of shipowner <p>If only seafarer resides in an EEA/EU country, this principle is still applicable on the basis of MLC, 2006.</p>

BELGIUM

On board Belgian flagged ships		Seafarers residing in Belgium	
<p>Seafarers residing in Belgium regardless nationality, admitted to Belgian social security system per Article 11 of Regulation (EC) 883/2004.</p>	<p>Seafarers + shipowner residing in the same EEA country are excluded from the Belgian social security system per Article 11(4) of Regulation (EC) 883/2004.</p>	<p>On board EEA flagged ships excluded from the Belgian social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, M. J. Bakker and Minister van Financiën, and C-347/10, Salemink</p>	<p>On board third-country flagged ships</p> <p>1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, SF if shipowner in an EEA country.</p>
		<p>2. If mobile and a substantial part of the work is not provided in Belgium, excluded from in favour of the shipowner's seat in an EEA country, per C-266/13, Kik</p>	
		<p>3. If shipowner in a third country, national rules apply. Article 1 of applicable Law 7 February 1945 refers to seafarers working on board Belgian ships, hence this case is excluded from the Belgian social security unless</p> <ul style="list-style-type: none"> - seafarers have been recruited via a Belgian RPS - and/or there is a bilateral agreement. 	

CROATIA

On board Croatian flagged ships		Seafarers residing in Croatia	
<p>Seafarers residing in Croatia regardless nationality, admitted to Croatian social security system per Article 11 of Regulation (EC) 883/2004.</p>	<p>Seafarers + shipowner residing in an EEA country are excluded from the Croatian social security system per Article 11(4) of Regulation (EC) 883/2004.</p>	<p>On board EEA flagged ships excluded from the Croatian social security system per Article 11 of Regulation (EC) 883/2004, C-106/11, M. J. Bakker and Minister van Financiën, and C-347/10, Saleminck</p>	<p>On board third-country flagged ships</p> <ol style="list-style-type: none"> 1. Admitted to per Article 11(3) of Regulation (EC) 883/2004 and C-631/17, SF if shipowner in an EEA country. 2. If mobile and a substantial part of the work is not provided in Croatia, excluded from in favour of the shipowner's seat in an EEA country, per C-266/13, Kik 3. If shipowner in a third country, national rules apply. According to Article 129 of the Code of Navigation, yes, but the seafarer pays the social security and not the employer as it applies for shorebased workers and seafarers engaged in national navigation.

Preliminary conclusions

- Principle of equal treatment between shore-based workers and seafarers residing in the country.
- Exception: The case of a seafarer residing in the country, but working on a vessel flagged in a third country for a shipowner based outside the EU and whose employment has not been gained through a recruitment and placement service (RPS) seated in the EU (in this case payments are usually requested from RPS in countries such as Belgium, Italy and Malta).

Preliminary conclusions

- If the only link to the country is the seafarer's habitual residence, countries are divided among those that:
 - do not contemplate the case
 - Do contemplate it, but only request seafarers to pay contributions,
 - either in a mandatory (Croatia)
 - or a voluntary basis (Belgium, France).

Preliminary conclusions

- Effective administrative cooperation
 - The system apparently works well
 - Although issues have arisen that requested the attention of
 - The Administrative Commission
 - The European Labour Authority

Discussion

- Flag State principle is efficient and effective as it helps shipowners to centralize their payments
- Interviewees from both flag States and labour-supplying countries raise the issue of a race-to-the-bottom if the residence principle was to be preferred. However, they did not abide to the flag State principle either, but agreed on the need to move towards a common EU social security system for seafarers as a way to avoid competitiveness problems.
- Interviewees from mainly labour-supplying countries indicate that they prefer the residence principle because of the short-term employment pattern that also affect EU-based seafarers and work on board flags of convenience.



Thank you!
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